

# EXHIBIT I

MITCHELL, OFFICER NICHOLAS BILL  
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<p>1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 RICHARD KAPUSCINSKI, Personal Representative of the Estate of 5 DAVID KAPUSCINSKI, Deceased, 6 Plaintiff, 7 vs. Case No. 2:17-c-v-11281 Hon. Arthur J. Tarnow Mag. Judge Anthony P. Patti 8 OFFICER NICHOLAS B. MITCHELL, OFFICER GARY ROBINSON, CITY OF 9 ROCKWOOD, and CITY OF GIBRALTAR, Jointly and Severally, 10 Defendants. 11 _____/ 12 DEPOSITION OF OFFICER NICHOLAS BILL MITCHELL 13 Taken by the Plaintiff on the 28th of June, 2018, at the 14 offices of the Gibraltar Police Department, 29450 Munro, 15 Gibraltar, Michigan, at 9:13 a.m. 16 17 18 19 20 21 22 23 24 25</p>	<p>1 TABLE OF CONTENTS 2 WITNESS: PAGE 3 OFFICER NICHOLAS BILL MITCHELL 4 Direct Examination by Mr. Weglarz 4 Cross-Examination by Ms. Forbush 169 5 Cross-Examination by Ms. McGiffert 173 Redirect Examination by Mr. Weglarz 175 6 Recross-Examination by Ms. McGiffert 178 7 8 9 EXHIBITS: MARKED 10 Exhibit 1 Taser Manual 18 11 Exhibit 2 Bedroom Photograph 67 12 Exhibit 3 Mitchell Report 151 13 Exhibit 4 Taser Use Report 160 14 Exhibit 5 Kapucinski Photograph 176 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 APPEARANCES: 2 For the Plaintiff: 3 MR. TODD J. WEGLARZ (P48035) Fieger Fieger Kenny &amp; Harrington PC 4 19390 West 10 Mile Road Southfield, Michigan 48075 5 (248)355-5555 6 7 For Defendants Mitchell and City of Rockwood: 8 MS. LAUREL F. MCGIFFERT (P31667) Plunkett Cooney 9 150 West Jefferson, Suite 800 Detroit, Michigan 48226 10 (313)983-4751 11 12 For Defendants Robinson and City of Gibraltar: 13 MS. AUDREY J. FORBUSH (P41744) Plunkett Cooney 14 111 East Court Street, Suite 1B Flint, Michigan 48502 15 (810)342-7014 16 17 Also Present: 18 Officer Gary Robinson Chief Randy Krause 19 Ms. Danielle Chidiac 20 21 REPORTED BY: 22 Ms. Leah M. Witt, CSR-8825 Certified Shorthand Reporter 23 (248)644-8888 24 25</p>	<p>1 Gibraltar, Michigan 2 Thursday, June 28, 2018 - 9:13 a.m. 3 OFFICER NICHOLAS BILL MITCHELL 4 HAVING BEEN CALLED BY THE PLAINTIFF AND SWORN: 5 MR. WEGLARZ: We're here for the deposition 6 of Officer Nicholas Mitchell, is that correct? 7 <b>THE WITNESS: Yes.</b> 8 MR. WEGLARZ: Taken pursuant to Notice and 9 agreement of counsel. Officer Mitchell, my name is 10 Todd Weglarz. I represent the plaintiff in this case. 11 I'm going to ask you some questions today about 12 yourself and about what you recall happening on the 13 evening of April the 16th of 2015. If you do not 14 understand a question, let me know and I'll do my best 15 to rephrase. If you need to stop, take a break, talk 16 to your counsel, use the restroom, whatever, just say 17 so and we can do that, fair enough? 18 <b>THE WITNESS: Okay.</b> 19 DIRECT EXAMINATION 20 BY MR. WEGLARZ: 21 Q. All right. For the record, your full and complete 22 name, please. 23 <b>A. Nicholas Bill Mitchell.</b> 24 Q. Date of birth, please? 25 <b>A. July 16th, 1989.</b></p>

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<p style="text-align: right;">Page 5</p> <p>1 Q. Did you review anything to prepare yourself for your deposition?</p> <p>2 <b>A. Yes, I did.</b></p> <p>3 Q. And tell me what you reviewed.</p> <p>4 <b>A. I reviewed the folder here of documents -- I believe you have the same documents -- including my report run.</b></p> <p>5 Q. All right. So included in that folder is your report, and I take it that is the complaint record for the Rockwood Police Department?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Anything else that represents your report pertaining to this incident?</p> <p>8 <b>A. By that would you mean video on a speed report?</b></p> <p>9 Q. Okay. Well, the complaint record report is what you authored, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And that's for the Rockwood PD?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And we'll talk about that shortly. Right now I'm just interested in what you consider your report pertaining to this incident, if there's anything more than that.</p> <p>14 <b>A. Just my report.</b></p> <p>15 Q. Okay. Did you author or note anything else about this incident other than that report?</p> <p>16 <b>A. No, I did not.</b></p>	<p style="text-align: right;">Page 7</p> <p>1 correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. With the audio of you and others being inside and wherever you happened to be that evening?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And that audio is from the microphone that you had where?</p> <p>6 <b>A. What? Repeat that, I'm sorry.</b></p> <p>7 Q. The audio is from a microphone I take it, and that microphone was physically where during that evening?</p> <p>8 <b>A. I believe it was on my belt.</b></p> <p>9 Q. Okay. Anything else that you reviewed?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Have you had your deposition taken before?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. How many times?</p> <p>14 <b>A. Once.</b></p> <p>15 Q. And when was this other time?</p> <p>16 <b>A. I don't recall the exact --</b></p> <p>17 Q. Ballpark.</p> <p>18 <b>A. -- date. Three to four years ago.</b></p> <p>19 Q. And was it a lawsuit filed against the police department?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Okay. What type of case did that involve?</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. Also included in that binder would be what?</p> <p>2 <b>A. The Michigan State Police report, the medical examiner's report, the Rockwood Police Department Taser use logs, the Rockwood Police Department Taser policy, old reports from 1999, the subject of the report being a -- some kind of a check fraud involving Mr. Kapuscinski, my Taser certification, and Taser warnings. I believe that is it.</b></p> <p>3 MS. MCGIFFERT: Counsel, if you would just allow me, I did provide him with this binder, and they are the documents that we provided to you that are Bates numbered RW0001 through RW0166.</p> <p>4 MR. WEGLARZ: And I appreciate that. And all those documents do sound familiar, so I appreciate you identifying those.</p> <p>5 BY MR. WEGLARZ:</p> <p>6 Q. Did you review or look at anything else to prepare yourself for the deposition other than the records you just identified for me?</p> <p>7 <b>A. The dash cam video and radio traffic.</b></p> <p>8 Q. All right. And the dash cam video is the video that was from your unit or car for that evening?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Okay. And really it's just a video it looks like primarily of the outside of that apartment complex,</p>	<p style="text-align: right;">Page 8</p> <p>1 <b>A. Civil landlord issue where I was a witness.</b></p> <p>2 Q. To your knowledge, have you ever been named as a defendant in a lawsuit before?</p> <p>3 <b>A. Not to my knowledge.</b></p> <p>4 Q. Have you ever filed a lawsuit yourself before?</p> <p>5 <b>A. No, I have not.</b></p> <p>6 Q. Have you ever been arrested or charged with a crime?</p> <p>7 <b>A. No, I have not.</b></p> <p>8 Q. Where did you go to high school?</p> <p>9 <b>A. Allen Park High School.</b></p> <p>10 Q. I'm assuming you graduated?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And when?</p> <p>13 <b>A. 2007.</b></p> <p>14 Q. Did you undergo any education after graduating from high school?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Describe that for me, please.</p> <p>17 <b>A. I did one year at Wayne State University and then transferred to Schoolcraft College where I obtained a associate's degree in criminal justice and completed the police academy.</b></p> <p>18 Q. And when did you obtain the associate's degree?</p> <p>19 <b>A. 2010.</b></p> <p>20 Q. When did you do the police academy?</p>

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<p style="text-align: right;">Page 9</p> <p>1 A. 2010.</p> <p>2 Q. And you finished it in 2010 as well?</p> <p>3 A. Yes. The police academy was the last semester of my</p> <p>4 associate's degree.</p> <p>5 Q. And that was through Schoolcraft?</p> <p>6 A. Yes.</p> <p>7 Q. And when you finished the academy, what was your</p> <p>8 ranking out of your class?</p> <p>9 A. I don't recall.</p> <p>10 Q. Can you give me an estimate?</p> <p>11 A. Probably somewhere in the middle. Thirty, twenty.</p> <p>12 MS. MCGIFFERT: Don't guess.</p> <p>13 BY MR. WEGLARZ:</p> <p>14 Q. Somewhere in the middle?</p> <p>15 A. Somewhere in the middle.</p> <p>16 Q. Okay. I depose a trooper once who was the absolute</p> <p>17 very last in his class, so being in the middle is good.</p> <p>18 You're currently employed?</p> <p>19 A. Yes.</p> <p>20 Q. Where?</p> <p>21 A. City of Rockwood.</p> <p>22 Q. And how long have you been employed by the city of</p> <p>23 Rockwood?</p> <p>24 A. Almost six years.</p> <p>25 Q. And when you first hired in with the city of Rockwood,</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. Any other places where you've worked, even if</p> <p>2 it's outside of law enforcement?</p> <p>3 A. Previously as a security guard and also for the parks</p> <p>4 and recreation department for the city of Allen Park.</p> <p>5 Q. And during what time period did you work in that</p> <p>6 capacity?</p> <p>7 MS. MCGIFFERT: Which one?</p> <p>8 BY MR. WEGLARZ:</p> <p>9 Q. Oh, those are two separate things?</p> <p>10 A. Yes.</p> <p>11 Q. My apologies. All right. So let's break that down.</p> <p>12 The security guard employment, that was where?</p> <p>13 A. The company was called Guardsmark, and I was contracted</p> <p>14 to the Solutia chemical plant in Trenton.</p> <p>15 Q. What time period?</p> <p>16 A. December 2010 until August 2012.</p> <p>17 Q. Anywhere else where you worked as a security guard?</p> <p>18 A. No.</p> <p>19 Q. All right. And then you worked for the parks and rec</p> <p>20 department for Allen Park?</p> <p>21 A. Yes.</p> <p>22 Q. What time period?</p> <p>23 A. It would have been about September 2006 through</p> <p>24 August 2012.</p> <p>25 Q. And what did you do there?</p>
<p style="text-align: right;">Page 10</p> <p>1 what was your job title?</p> <p>2 A. Patrolman.</p> <p>3 Q. And has that job title been the same since you've been</p> <p>4 employed by the city of Rockwood?</p> <p>5 A. Yes.</p> <p>6 Q. Have you worked in law enforcement anywhere else other</p> <p>7 than through the city of Rockwood?</p> <p>8 A. As a volunteer, unpaid.</p> <p>9 Q. Where?</p> <p>10 A. The city of Taylor auxiliary.</p> <p>11 Q. And when did you start doing that?</p> <p>12 A. 2012.</p> <p>13 Q. Are you still doing it?</p> <p>14 A. No.</p> <p>15 Q. And when did you stop?</p> <p>16 A. 2012.</p> <p>17 Q. And why did you do that?</p> <p>18 A. I was hired -- oh, why did I?</p> <p>19 Q. Yeah.</p> <p>20 A. To get experience for resume.</p> <p>21 Q. And why did you stop?</p> <p>22 A. I was hired with the city of Rockwood.</p> <p>23 Q. Gotcha. That covers all of your law enforcement</p> <p>24 employment?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. In the winter I primarily was a Zamboni driver in</p> <p>2 charge of keeping care of the ice arena and in the</p> <p>3 summer cutting grass in the ball fields, taking care</p> <p>4 of -- maintaining ball fields.</p> <p>5 Q. Do you skate?</p> <p>6 A. Yes.</p> <p>7 Q. Figured you did. They got a nice arena there.</p> <p>8 A. Yes.</p> <p>9 Q. Been there several times. Anywhere else where you've</p> <p>10 been employed?</p> <p>11 A. Previous to that, in high school a mini golf course in</p> <p>12 Taylor.</p> <p>13 Q. What time period?</p> <p>14 A. It would have been the summer of 2007.</p> <p>15 Q. What was the name of the place?</p> <p>16 A. Midway Golf.</p> <p>17 Q. I have not been to that facility several times or at</p> <p>18 all. Anywhere else where you've worked?</p> <p>19 A. No.</p> <p>20 Q. Have you ever been disciplined or reprimanded by any of</p> <p>21 your employers at any time?</p> <p>22 A. Yes.</p> <p>23 MS. MCGIFFERT: I'm just going to place an</p> <p>24 objection to this entire line of questioning.</p> <p>25 MR. WEGLARZ: Sure.</p>

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<p style="text-align: right;">Page 13</p> <p>1 BY MR. WEGLARZ:</p> <p>2 Q. Which employers?</p> <p>3 A. City of Rockwood.</p> <p>4 Q. Okay. And how many times?</p> <p>5 A. Once.</p> <p>6 Q. And when was that?</p> <p>7 A. If I could refer to the document.</p> <p>8 Q. And it doesn't have to be exact --</p> <p>9 MS. MCGIFFERT: Want me to help him?</p> <p>10 BY MR. WEGLARZ:</p> <p>11 Q. -- though I appreciate you --</p> <p>12 MS. MCGIFFERT: Want me to help him?</p> <p>13 BY MR. WEGLARZ:</p> <p>14 Q. -- wanting to be precise.</p> <p>15 MS. MCGIFFERT: Do you want me to help him?</p> <p>16 MR. WEGLARZ: I don't care.</p> <p>17 MS. MCGIFFERT: Excuse me.</p> <p>18 THE WITNESS: February 5th, 2013.</p> <p>19 BY MR. WEGLARZ:</p> <p>20 Q. And that was in connection with what incident?</p> <p>21 A. Damage to a patrol vehicle.</p> <p>22 Q. And what happened for there to be damage to the patrol vehicle?</p> <p>23 A. I lost control in snow and ice.</p> <p>24 Q. And what was the discipline that was given?</p>	<p style="text-align: right;">Page 15</p> <p>1 presentation, including videos, also hands-on training</p> <p>2 where you have to deploy a Taser. Also -- I believe</p> <p>3 that's it.</p> <p>4 MS. MCGIFFERT: What was the question, Todd?</p> <p>5 MR. WEGLARZ: To just tell me what his</p> <p>6 initial Taser training consisted of.</p> <p>7 MS. MCGIFFERT: Okay.</p> <p>8 BY MR. WEGLARZ:</p> <p>9 Q. And how many hours total did all of this take?</p> <p>10 A. I don't recall.</p> <p>11 Q. And is it something that was several days, several</p> <p>12 weeks?</p> <p>13 A. It was done over the course of one day.</p> <p>14 Q. So several hours. I take it you completed that</p> <p>15 training successfully?</p> <p>16 A. Yes.</p> <p>17 Q. And did that training involve in discussing the ideal</p> <p>18 target area?</p> <p>19 A. Yes.</p> <p>20 Q. And what was -- how was that explained to you as to</p> <p>21 what the ideal target area was?</p> <p>22 MS. FORBUSH: I'm just going to object to the</p> <p>23 form of the question. I think the term is the</p> <p>24 preferred target area.</p> <p>25 MS. MCGIFFERT: Join.</p>
<p style="text-align: right;">Page 14</p> <p>1 A. A verbal written warning I believe. Written verbal</p> <p>2 warning.</p> <p>3 Q. Okay. Any other reprimands, discipline, in service,</p> <p>4 anything?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. All right. And that's the only time through any</p> <p>7 employer that you've had throughout your lifetime,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. When you went to the police academy, did you</p> <p>11 receive any type of training on the use of Tasers?</p> <p>12 A. No.</p> <p>13 Q. I take it at some point in time you did receive some</p> <p>14 Taser training.</p> <p>15 A. Yes.</p> <p>16 Q. And can you tell me when you received Taser training?</p> <p>17 A. Once again, if I can look at the document.</p> <p>18 Q. Absolutely. And I can tell you, all my questions, if</p> <p>19 you need assistance in your response by having to refer</p> <p>20 to records, please feel free to do so.</p> <p>21 A. My initial Taser training was completed August 31st,</p> <p>22 2012.</p> <p>23 Q. And tell me what that initial Taser training consisted</p> <p>24 of.</p> <p>25 A. It consisted of classroom lectures, a PowerPoint</p>	<p style="text-align: right;">Page 16</p> <p>1 BY MR. WEGLARZ:</p> <p>2 Q. Go ahead.</p> <p>3 A. The preferred target area --</p> <p>4 Q. But you're okay with my -- I said ideal, right? You</p> <p>5 didn't disagree with ideal, did you?</p> <p>6 A. I believe the wording in the presentations is</p> <p>7 preferred.</p> <p>8 Q. Okay.</p> <p>9 A. The preferred target areas, when feasible, would be the</p> <p>10 abdomen, legs, and the back.</p> <p>11 Q. Who put on the training, by the way?</p> <p>12 A. At the time it was Sergeant Krause, who is now the</p> <p>13 chief of police.</p> <p>14 Q. Did anyone else assist with that training?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Any reps from the Taser company?</p> <p>17 A. Not that I recall.</p> <p>18 Q. And was it explained why the abdomen, legs, and back</p> <p>19 areas are the preferred target area?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And tell me what the explanation was.</p> <p>22 A. There are bigger muscle groups there to cause -- or to</p> <p>23 make the Taser more effective.</p> <p>24 Q. Any other reasons that were given?</p> <p>25 A. I believe -- if I can refer to the Taser manual?</p>

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<p style="text-align: right;">Page 17</p> <p>1 Q. Sure.</p> <p>2 <b>A. It increases the dart-to-heart distance.</b></p> <p>3 Q. Any other reasons?</p> <p>4 <b>A. Not that I'm aware of.</b></p> <p>5 Q. Did the training ever explain, mention, or advise that</p> <p>6 hitting certain areas can cause an increase in the risk</p> <p>7 of harm to the recipient of the Taser?</p> <p>8 <b>A. I'm not sure.</b></p> <p>9 Q. Have you ever heard of that?</p> <p>10 <b>A. I believe it has a low probability. If I can refer to</b></p> <p>11 <b>the Taser warnings. It does say that in rare</b></p> <p>12 <b>circumstances that there is a low probability.</b></p> <p>13 Q. A low probability of what?</p> <p>14 <b>A. Inducing extra heartbeats.</b></p> <p>15 Q. And inducing extra heartbeats can occur if you hit what</p> <p>16 area?</p> <p>17 <b>A. I am not sure.</b></p> <p>18 Q. Have you ever heard that if the Taser strikes the chest</p> <p>19 area, that that can increase the risk of harm to the</p> <p>20 subject?</p> <p>21 <b>A. If it's in the Taser -- let me refer to the Taser</b></p> <p>22 <b>manual again here.</b></p> <p>23 Q. Sure.</p> <p>24 MS. FORBUSH: I'm sorry, could you repeat the</p> <p>25 question?</p>	<p style="text-align: right;">Page 19</p> <p>1 information contained on Exhibit 1 would have been</p> <p>2 provided to you during your training, is that correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Your initial training on the Tasers, correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. And on page 1 -- and by the way, do they even</p> <p>7 give you a copy of this?</p> <p>8 <b>A. I don't recall if I was given a copy or not.</b></p> <p>9 Q. All right. So if a copy wasn't provided, they at least</p> <p>10 went through the substance of Exhibit Number 1,</p> <p>11 correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And you're aware of all the information set forth on</p> <p>14 Exhibit Number 1 here during your initial Taser</p> <p>15 training.</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And I believe on page 1 of Exhibit 1, do you see where</p> <p>18 they have a section that says Warning and it discusses</p> <p>19 cardiac capture?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And it says, "CEW exposure in the chest area near the</p> <p>22 heart has a low probability of inducing extra heart</p> <p>23 beats" known as cardiac capture?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. You were aware of that after you received your</p>
<p style="text-align: right;">Page 18</p> <p>1 MR. WEGLARZ: Can you read it back, please?</p> <p>2 (At 9:32 a.m., the court reporter read back:</p> <p>3 "Question: Have you ever heard that if the</p> <p>4 Taser strikes the chest area, that that can</p> <p>5 increase the risk of harm to the subject?")</p> <p>6 <b>THE WITNESS: The way that I read it, when</b></p> <p>7 <b>possible, avoid the frontal chest area near the heart</b></p> <p>8 <b>to reduce the risk. I'm not seeing anywhere where it</b></p> <p>9 <b>increases the risk.</b></p> <p>10 BY MR. WEGLARZ:</p> <p>11 Q. Okay. And you're looking at the Taser CEW Warnings,</p> <p>12 Instructions, and Information that's provided to law</p> <p>13 enforcement, correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. We're actually going to mark that as Exhibit 1 since</p> <p>16 we're talking about it at length here.</p> <p>17 MS. MCGIFFERT: What do you want to mark?</p> <p>18 MR. WEGLARZ: The Taser warnings that he's</p> <p>19 looking at right there.</p> <p>20 (At 9:34 a.m., Exhibit 1 marked)</p> <p>21 BY MR. WEGLARZ:</p> <p>22 Q. If I could see that just for a second. Thank you,</p> <p>23 officer. And just for the record, Exhibit Number 1</p> <p>24 consists of four pages, and they do have Bates stamps</p> <p>25 on them, RW1 through RW4. And, Officer Mitchell, the</p>	<p style="text-align: right;">Page 20</p> <p>1 training --</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. -- correct? And it says, "In rare circumstances,</p> <p>4 cardiac capture could lead to cardiac arrest."</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. And you're aware of that, correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. You were aware of that after you received your initial</p> <p>9 training, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And that would be one of the reasons as to why the</p> <p>12 preferred target area does not include the chest area,</p> <p>13 correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. If you do deploy a Taser and hit the chest area, that</p> <p>16 increases the risk of cardiac arrest to that person,</p> <p>17 correct?</p> <p>18 MS. MCGIFFERT: I'm going to --</p> <p>19 MS. FORBUSH: Objection. Foundation.</p> <p>20 MS. MCGIFFERT: -- object as to form and</p> <p>21 foundation as well.</p> <p>22 <b>THE WITNESS: I do not read anything in there</b></p> <p>23 <b>about increasing in that paragraph.</b></p> <p>24 BY MR. WEGLARZ:</p> <p>25 Q. Do you believe that if you deploy a Taser hitting the</p>

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<p style="text-align: right;">Page 21</p> <p>1 chest area, that the risk of cardiac arrest is greater</p> <p>2 than if you were to use the Taser and hit the abdomen</p> <p>3 or the back or the leg area?</p> <p>4 MS. FORBUSH: Object to foundation.</p> <p>5 MS. McGIFFERT: Same. Join.</p> <p>6 <b>THE WITNESS: I would have no idea. I'm not</b></p> <p>7 <b>a doctor.</b></p> <p>8 BY MR. WEGLARZ:</p> <p>9 Q. Well, no, but you are someone who's trained in Tasers</p> <p>10 who has an understanding of the preferred target area,</p> <p>11 correct?</p> <p>12 <b>A. Correct, but I would not know if that would increase it</b></p> <p>13 <b>or not.</b></p> <p>14 Q. Do you agree that deploying a Taser in the area of the</p> <p>15 chest near the heart does involve some risk of cardiac</p> <p>16 injury?</p> <p>17 MS. McGIFFERT: Object as to foundation.</p> <p>18 <b>THE WITNESS: I would not know.</b></p> <p>19 BY MR. WEGLARZ:</p> <p>20 Q. Was that ever explained to you during your training</p> <p>21 that if you deploy a Taser in the chest area near the</p> <p>22 heart, that that could cause cardiac injury or harm?</p> <p>23 <b>A. As it's worded in the document, in rare circumstances</b></p> <p>24 <b>and it is a low probability.</b></p> <p>25 Q. Would you -- was it ever explained to you during your</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Okay. And I'm sure the training consisted more of just</p> <p>2 reading that four-page document, correct?</p> <p>3 <b>A. More -- can you repeat that one more time?</b></p> <p>4 Q. Your Taser training consisted of more than just going</p> <p>5 through that four-page document --</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. -- that we marked as Exhibit Number 1, right?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. When you finished that training, did you walk away with</p> <p>10 the understanding that, in general, you should try, if</p> <p>11 possible, to avoid hitting the chest area because that</p> <p>12 could cause cardiac injury?</p> <p>13 <b>A. I was trained to, when feasible, avoid the chest area.</b></p> <p>14 <b>When practical, avoid intentionally targeting the face</b></p> <p>15 <b>area, the chest area, the breast, the groin, the</b></p> <p>16 <b>genitals, and preexisting injury areas.</b></p> <p>17 Q. All right. And was your understanding that you should,</p> <p>18 in general, try to avoid the chest area because if you</p> <p>19 do hit the chest area, that could cause injury?</p> <p>20 <b>A. When feasible, avoid hitting the non-preferred target</b></p> <p>21 <b>areas, yes.</b></p> <p>22 Q. Right. Including the chest.</p> <p>23 <b>A. The chest would be above the abdomen area. It would be</b></p> <p>24 <b>not in the preferred target areas to hit, when</b></p> <p>25 <b>feasible.</b></p>
<p style="text-align: right;">Page 22</p> <p>1 training that, hey, if you deploy a Taser and you hit</p> <p>2 the chest area near the heart, that could cause cardiac</p> <p>3 injury, even cardiac arrest?</p> <p>4 <b>A. As the document states, in rare circumstances and has a</b></p> <p>5 <b>low probability.</b></p> <p>6 Q. I understand that's what the document says. I just</p> <p>7 want to know, when you left that training that was</p> <p>8 provided by Sergeant Krause, correct?</p> <p>9 <b>A. At the time sergeant, now chief, yes.</b></p> <p>10 Q. Yes. Did you leave that training with the</p> <p>11 understanding that, you know what, in general I should</p> <p>12 probably try avoiding hitting the chest area when I</p> <p>13 deploy Tasers because that could cause cardiac injury</p> <p>14 or harm to the subjects?</p> <p>15 <b>A. When I left the training, I had the knowledge that's</b></p> <p>16 <b>written here, that it has a low probability, it is rare</b></p> <p>17 <b>circumstances, there are preferred target areas to hit</b></p> <p>18 <b>when feasible.</b></p> <p>19 Q. Okay. And I appreciate that, you pointing out what it</p> <p>20 shows in the document, but I just want to know your</p> <p>21 overall understanding, not just based on what's in the</p> <p>22 document. And you didn't even know if you were</p> <p>23 provided a copy of the document, correct?</p> <p>24 <b>A. Correct, I don't know if I was provided a physical</b></p> <p>25 <b>copies, but copies were -- have been made available.</b></p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And one of the reasons why you would try to avoid the</p> <p>2 chest area is to try to avoid cardiac injury.</p> <p>3 MS. McGIFFERT: I'm just going to place an</p> <p>4 objection. The question's been asked and answered</p> <p>5 multiple times, but go ahead.</p> <p>6 <b>THE WITNESS: As I've read several times here</b></p> <p>7 <b>from the document, that it has a low probability of</b></p> <p>8 <b>inducing any extra heartbeats, cardiac capture, and in</b></p> <p>9 <b>rare circumstances. So in the rare circumstances and</b></p> <p>10 <b>low probability, I would need to avoid the</b></p> <p>11 <b>non-preferred areas when feasible.</b></p> <p>12 BY MR. WEGLARZ:</p> <p>13 Q. And what are the other non-preferred areas besides the</p> <p>14 chest?</p> <p>15 <b>A. The face, eyes, head, throat.</b></p> <p>16 Q. So if you hit the face, the eyes, the head, or the</p> <p>17 throat, does that also cause a low probability of</p> <p>18 inducing extra heartbeats?</p> <p>19 <b>A. I'm not sure.</b></p> <p>20 Q. Is that your understanding?</p> <p>21 <b>A. It does not say in the training anywhere that it could.</b></p> <p>22 Q. Since receiving that initial training, have you tried</p> <p>23 to avoid hitting the chest area when deploying Tasers?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And why?</p>



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<p style="text-align: right;">Page 25</p> <p>1 <b>A. It's not one of the preferred target areas of the</b></p> <p>2 <b>Taser.</b></p> <p>3 Q. And one of these reasons being because if you hit a</p> <p>4 non-preferred target area, that could cause harm or</p> <p>5 injury?</p> <p>6 <b>A. There is a low probability of any cardiac capture and</b></p> <p>7 <b>in rare circumstances.</b></p> <p>8 Q. But even though there's a low probability, that means</p> <p>9 that could cause injury, correct?</p> <p>10 <b>A. To a low probability, yes.</b></p> <p>11 Q. And was avoidance of the chest area also discussed</p> <p>12 during lecture and the PowerPoint that you described?</p> <p>13 <b>A. I believe so.</b></p> <p>14 Q. And did they also discuss the low probability of</p> <p>15 cardiac capture?</p> <p>16 <b>A. I believe so.</b></p> <p>17 Q. And the low probability of cardiac capture leading to</p> <p>18 cardiac arrest?</p> <p>19 <b>A. I'm not sure.</b></p> <p>20 Q. What is your understanding as to what cardiac capture</p> <p>21 is?</p> <p>22 <b>A. I'm not sure.</b></p> <p>23 Q. Do you have any idea as to what it means?</p> <p>24 <b>A. Just would know that it would be something with the</b></p> <p>25 <b>heart. I do not know.</b></p>	<p style="text-align: right;">Page 27</p> <p>1 Q. I'm just interested in knowing as you sit here today,</p> <p>2 do you recall anything being different or them flagging</p> <p>3 something out, hey, we're going to do this now instead</p> <p>4 of what we told you from before?</p> <p>5 <b>A. No.</b></p> <p>6 Q. You also mentioned that that includes hands-on</p> <p>7 training?</p> <p>8 <b>A. Hands-on use of the Taser, yes.</b></p> <p>9 Q. Okay. And what do you do as part of that training?</p> <p>10 <b>A. You deploy two cartridges.</b></p> <p>11 Q. And what's your target?</p> <p>12 <b>A. There's a cardboard cutout.</b></p> <p>13 Q. And does this cardboard cutout look like a person?</p> <p>14 <b>A. It's shaped as a torso from the waist up.</b></p> <p>15 Q. And where are you supposed to deploy those two</p> <p>16 cartridges on that cutout which depicts a torso from</p> <p>17 the waist up?</p> <p>18 <b>A. It would be just anywhere on it. There's not any</b></p> <p>19 <b>specific area. It's not a picture of a person, whether</b></p> <p>20 <b>it be facing one way or facing the other way. It's</b></p> <p>21 <b>just cardboard, and you just deploy into the cardboard.</b></p> <p>22 Q. And when you deploy these two cartridges, do you try to</p> <p>23 hit the chest area?</p> <p>24 <b>A. There's no area drawn on the cardboard. It could be</b></p> <p>25 <b>front or back of the person. It would just be a box --</b></p>
<p style="text-align: right;">Page 26</p> <p>1 Q. Is it a good thing or bad thing?</p> <p>2 <b>A. I would assume a bad thing.</b></p> <p>3 Q. Did you have any other Taser training beyond the</p> <p>4 initial training that you've described for us back in</p> <p>5 August of 2012?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And describe the other training on Tasers you received.</p> <p>8 <b>A. Up until this incident, just a yearly recertification.</b></p> <p>9 Q. And what's involved with getting your yearly</p> <p>10 recertification?</p> <p>11 <b>A. You just have to take the class again.</b></p> <p>12 Q. The same one-day training course that you took</p> <p>13 initially in August of 2012?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Is there anything that's different when you take it</p> <p>16 every year? Is it updated?</p> <p>17 <b>A. I believe it's updated.</b></p> <p>18 Q. Okay. And did you take that one-day Taser training on</p> <p>19 an annual basis from August of 2012 up to the present?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And you've always passed it?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. Do you recall any changes being made throughout</p> <p>24 these annual trainings?</p> <p>25 <b>A. I don't recall what the changes would be, no.</b></p>	<p style="text-align: right;">Page 28</p> <p>1 <b>really smaller box on top of it.</b></p> <p>2 Q. Have you ever deployed your Taser in the line of duty</p> <p>3 aside from this incident involving Mr. Kapuscinski?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. How many times?</p> <p>6 <b>A. This incident was the third time.</b></p> <p>7 Q. How about subsequent to this incident?</p> <p>8 <b>A. I believe twice.</b></p> <p>9 Q. And what kind of Tasers do you use at the Rockwood PD?</p> <p>10 <b>A. Currently the X2.</b></p> <p>11 Q. And then you used an X2 at the time of this incident?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Is that same Taser that was used in this incident with</p> <p>14 Mr. Kapuscinski still being used?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. The first time that you deployed your Taser in the line</p> <p>17 of duty was approximately how long ago?</p> <p>18 <b>A. If I could refer to my documents?</b></p> <p>19 Q. Sure.</p> <p>20 <b>A. May of 2013.</b></p> <p>21 Q. And what were the circumstances leading up to the use</p> <p>22 of your Taser?</p> <p>23 <b>A. A individual who was harming himself in our jail cell,</b></p> <p>24 <b>in order to get him to stop harming himself, I deployed</b></p> <p>25 <b>a Taser on him.</b></p>



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<p style="text-align: right;">Page 29</p> <p>1 Q. And where did you hit him? What target?</p> <p>2 A. <b>If I could refer to my documents. He was hit in the</b></p> <p>3 <b>right thigh.</b></p> <p>4 Q. And how was the suspect positioned when you deployed</p> <p>5 your Taser?</p> <p>6 A. <b>I don't recall.</b></p> <p>7 Q. How many times did you fire the Taser?</p> <p>8 A. <b>Once.</b></p> <p>9 Q. And how do these things work in general? You deploy</p> <p>10 the cartridge, the two probes are supposed to make</p> <p>11 contact and stick to the subject, correct?</p> <p>12 A. <b>Yes.</b></p> <p>13 Q. And then does it automatically fire, or do you have to</p> <p>14 press the Taser again or activate the trigger again?</p> <p>15 Let me back up. When you deploy the cartridge --</p> <p>16 A. <b>Yes.</b></p> <p>17 Q. -- which shoots the two darts, how do you do that?</p> <p>18 A. <b>You pull the trigger.</b></p> <p>19 Q. And then once the two darts hit the subject, does it</p> <p>20 automatically fire, or do you have to pull the trigger</p> <p>21 again?</p> <p>22 A. <b>I'm not sure I understand. I've already fired the</b></p> <p>23 <b>Taser. How do I fire it?</b></p> <p>24 Q. Yeah.</p> <p>25 A. <b>You pull the trigger, the probes come out, they stick</b></p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Through the same darts that are already --</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. -- in the subject.</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. Okay. All right. That's for the X26 --</p> <p>6 A. <b>Yes.</b></p> <p>7 Q. -- that you used in 2013.</p> <p>8 A. <b>Yes.</b></p> <p>9 Q. Is it any different for the X2?</p> <p>10 A. <b>Yes.</b></p> <p>11 Q. And how is the X2 different?</p> <p>12 A. <b>The X2 has two cartridges. I would pull the trigger, I</b></p> <p>13 <b>would tase somebody one time. I could then pull the</b></p> <p>14 <b>trigger again and it would deploy a second cartridge,</b></p> <p>15 <b>or there is a switch on the side to use the same</b></p> <p>16 <b>cartridge again.</b></p> <p>17 Q. All right. So if you wanted to do another five-second</p> <p>18 cycle of the darts already in the subject after you did</p> <p>19 the first tase --</p> <p>20 A. <b>Yes.</b></p> <p>21 Q. -- do you -- can you do that on the X2 --</p> <p>22 A. <b>The X2, yes.</b></p> <p>23 Q. -- or do you have to shoot the other cartridge if you</p> <p>24 want to do another tase?</p> <p>25 A. <b>No, you can use the same one.</b></p>
<p style="text-align: right;">Page 30</p> <p>1 <b>into the subject, at which point he is then being</b></p> <p>2 <b>tased.</b></p> <p>3 Q. Okay. So it's juiced. As soon as those probes make</p> <p>4 contact, they're full of juice, and how long does that</p> <p>5 go on for?</p> <p>6 A. <b>Five seconds.</b></p> <p>7 Q. All right. And if you wanted to fire it again, do you</p> <p>8 just hit the trigger again?</p> <p>9 A. <b>It wouldn't fire, it would just recharge. It would</b></p> <p>10 <b>just go a five-second cycle again. On the Taser used</b></p> <p>11 <b>at this time during the first incident, you would pull</b></p> <p>12 <b>the trigger again and he would be tased again.</b></p> <p>13 Q. Okay. When you say you pull the trigger again, that's</p> <p>14 for which Taser?</p> <p>15 A. <b>In 2013, my first Taser deployment, which I believe is</b></p> <p>16 <b>the one we were talking about --</b></p> <p>17 Q. Yes.</p> <p>18 A. <b>-- we used the X26 Taser, which carried one cartridge.</b></p> <p>19 <b>So I would pull the trigger once, and he would be hit</b></p> <p>20 <b>with the Taser probes and be under power of the Taser.</b></p> <p>21 <b>If you wanted to tase him again, if he was getting up,</b></p> <p>22 <b>coming after you, you would pull it again and then pull</b></p> <p>23 <b>the trigger again and he would be tased again.</b></p> <p>24 Q. For another five-second cycle.</p> <p>25 A. <b>Yes.</b></p>	<p style="text-align: right;">Page 32</p> <p>1 Q. All right. And to do that, you have to do it with a</p> <p>2 mechanism on the side, is that what you said?</p> <p>3 A. <b>Yes, a button on the side.</b></p> <p>4 Q. And what do they call that when you do it that way?</p> <p>5 A. <b>That would be you press the ARC switch.</b></p> <p>6 Q. The ARC switch. And once you hit the switch, does it</p> <p>7 automatically go through a five-second cycle?</p> <p>8 A. <b>When you use the switch, you have to hold it down for</b></p> <p>9 <b>the five seconds while watching the screen and release</b></p> <p>10 <b>at five.</b></p> <p>11 Q. Okay. Can you release at two?</p> <p>12 A. <b>Yes.</b></p> <p>13 Q. But the longest it will go is for five seconds.</p> <p>14 A. <b>Unless you continue to hold that button down, it will</b></p> <p>15 <b>continue to go.</b></p> <p>16 Q. So you can fire it for 20 seconds if you want, right?</p> <p>17 A. <b>Theoretically, yes.</b></p> <p>18 Q. Is that -- is that ever done?</p> <p>19 A. <b>No.</b></p> <p>20 Q. Does the training say to do that?</p> <p>21 A. <b>No.</b></p> <p>22 Q. What does the training say to do as to the duration of</p> <p>23 the fire -- the firing?</p> <p>24 A. <b>It's five-second cycles.</b></p> <p>25 Q. Is there any risk of harm presented to the suspect if</p>

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<p style="text-align: right;">Page 33</p> <p>1 you go longer than five seconds?</p> <p>2 <b>A. The training I believe says that there is, yes.</b></p> <p>3 Q. Okay. And what's the risk of harm?</p> <p>4 <b>A. I believe it would be you could injure them by keeping</b></p> <p>5 <b>them under power, and I believe there would be any --</b></p> <p>6 <b>if I could refer to my documents. I'm not seeing it</b></p> <p>7 <b>in the documents. I'm not sure.</b></p> <p>8 Q. During your training, was it -- did they also caution</p> <p>9 against using consecutive firings, if possible?</p> <p>10 <b>A. The firing of a Taser should only be used the minimum</b></p> <p>11 <b>amount needed to control a situation.</b></p> <p>12 Q. Okay. And ideally you hope that just one firing will</p> <p>13 do it, correct?</p> <p>14 <b>A. Ideally.</b></p> <p>15 Q. And they train you to, in conjunction with the Taser,</p> <p>16 to also use other control techniques to take control of</p> <p>17 the situation, correct?</p> <p>18 <b>A. If feasible.</b></p> <p>19 Q. Yeah. And one of the reasons for that is to hopefully</p> <p>20 prevent having to cycle it more than one time, correct?</p> <p>21 <b>A. I guess so, yes.</b></p> <p>22 Q. Okay. Because each time that you do another Taser</p> <p>23 cycle where you fire it for another two to five</p> <p>24 seconds, that does present a further increase in the</p> <p>25 risk of harm to the subject, true?</p>	<p style="text-align: right;">Page 35</p> <p>1 MS. MCGIFFERT: Join.</p> <p>2 MS. FORBUSH: You said if you're able to hit</p> <p>3 the preferred areas?</p> <p>4 BY MR. WEGLARZ:</p> <p>5 Q. Yeah. If you deploy the Taser and hit non-preferred</p> <p>6 areas, the chest for example, when you could have hit</p> <p>7 the abdomen or the back or the legs, would that be</p> <p>8 excessive force?</p> <p>9 <b>A. No.</b></p> <p>10 Q. And why not?</p> <p>11 <b>A. It's only when feasible to hit the preferred target</b></p> <p>12 <b>areas. It's not always feasible to hit those areas.</b></p> <p>13 Q. That's a fair point. That's a fair point. If it's</p> <p>14 feasible to hit areas like the legs, the abdomen, the</p> <p>15 back, if it's feasible, would it be excessive force if</p> <p>16 you hit the chest?</p> <p>17 <b>A. No.</b></p> <p>18 Q. When you deployed the Taser that first time back in May</p> <p>19 of 2013, you hit the subject in the right thigh, and I</p> <p>20 take it you only had to fire it once?</p> <p>21 <b>A. If I can refer to my document.</b></p> <p>22 Q. Sure.</p> <p>23 <b>A. The Taser was fired one time as there was only one</b></p> <p>24 <b>cartridge to fire. There was two cycles applied, one</b></p> <p>25 <b>of them failed. One of the cycles did not work.</b></p>
<p style="text-align: right;">Page 34</p> <p>1 MS. MCGIFFERT: Object as to foundation. Go</p> <p>2 ahead.</p> <p>3 <b>THE WITNESS: I'm not sure if it would cause</b></p> <p>4 <b>any harm. I wouldn't know. I don't know.</b></p> <p>5 BY MR. WEGLARZ:</p> <p>6 Q. The Taser in general is considered nonlethal force?</p> <p>7 <b>A. I believe so, yes.</b></p> <p>8 Q. Nonetheless, it's still a use of force, true?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. And you understand that working as a police officer,</p> <p>11 even when you use what's typically referred to as</p> <p>12 nonlethal force, you must use that force reasonably,</p> <p>13 correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And you would agree that the use of a Taser, depending</p> <p>16 on how it's used, can be excessive.</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. If you fire it more than you need to fire it, that</p> <p>19 would be excessive force, correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And if you use it in the non-preferred areas, if you're</p> <p>22 able to hit the preferred areas, that could be</p> <p>23 excessive force?</p> <p>24 <b>A. No.</b></p> <p>25 MS. FORBUSH: Object to form.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Do you know why?</p> <p>2 <b>A. I do not know why.</b></p> <p>3 Q. And how do you know it didn't work?</p> <p>4 <b>A. I deployed the Taser, I could hear the arcing, but the</b></p> <p>5 <b>probes did not deploy.</b></p> <p>6 Q. All right. So the probes never left the Taser unit?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Okay. And when the probes left the Taser unit the</p> <p>9 second time, it worked, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And it took control of the subject.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. When was the second time you deployed the Taser in the</p> <p>14 line of duty?</p> <p>15 <b>A. Once again, referring to my document. March 2nd, 2014.</b></p> <p>16 Q. And tell me the circumstances leading up to that.</p> <p>17 <b>A. There was a violent domestic assault suspect that we</b></p> <p>18 <b>were -- myself and a Flat Rock officer were attempting</b></p> <p>19 <b>to take into custody. He began fighting with the Flat</b></p> <p>20 <b>Rock officer, at which point I deployed the Taser.</b></p> <p>21 Q. By the way, to use the Taser reasonably, you can't use</p> <p>22 the Taser for punitive measures, can you?</p> <p>23 <b>A. By that you mean just as punishment?</b></p> <p>24 Q. Yes.</p> <p>25 <b>A. No.</b></p>

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<p style="text-align: right;">Page 37</p> <p>1 Q. There has to be some risk of harm to you or some 2 threatened risk of harm.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. For example, you can't deploy a Taser on a subject 5 simply because the subject is not responding or 6 listening to you.</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. There would have to be some other threatened risk of 9 harm to you in conjunction with that for you to 10 lawfully use the Taser, do you agree?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And when you deployed the Taser in March of 2014, what 13 part of the body of the suspect did you hit?</p> <p>14 <b>A. Referring to my documents. He was hit in the lower 15 back.</b></p> <p>16 Q. By the way, is there one area that you always try to 17 target?</p> <p>18 <b>A. You always try to target the preferred target areas.</b></p> <p>19 Q. Okay. But is there one in particular you always have a 20 preference for?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Is there kind of like a hierarchy? Go for the back. 23 If that's not available, then the legs?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Do you ever try to hit the arms?</p>	<p style="text-align: right;">Page 39</p> <p>1 <b>with the first one.</b></p> <p>2 Q. And why?</p> <p>3 <b>A. I'm not sure exactly why, what the circumstances were 4 behind it. Just went off the second time.</b></p> <p>5 Q. Was that intentional?</p> <p>6 <b>A. No, it was not intentional.</b></p> <p>7 Q. And the second cartridge that was deployed, did that 8 also take effect on the subject?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And where did you hit the subject when you deployed the 11 second cartridge?</p> <p>12 <b>A. The subject was only hit once -- or it was only hit 13 with one of the Taser probes from that one, and it went 14 into his lower back.</b></p> <p>15 Q. All right. So he had two probes stuck in him from the 16 first cartridge deployment and one probe from the 17 second cartridge deployment.</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Did you fire it after the second cartridge was deployed 20 for a third time?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Now, even though only one probe hit the subject, was he 23 tased? I mean, was he --</p> <p>24 <b>A. He was --</b></p> <p>25 Q. -- did it take effect? Was he shocked?</p>
<p style="text-align: right;">Page 38</p> <p>1 <b>A. I always aim for any of the preferred target areas.</b></p> <p>2 Q. Would the arms be a preferred target area?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And how many times did you fire the Taser the second 5 time?</p> <p>6 <b>A. The second time --</b></p> <p>7 MS. MCGIFFERT: Excuse me. Just so the 8 record's clear, the second time?</p> <p>9 MR. WEGLARZ: Yeah, it's confusing.</p> <p>10 BY MR. WEGLARZ:</p> <p>11 Q. The time you deployed it March of 2014 I think is much 12 better.</p> <p>13 <b>A. Okay. That was deployed twice at that time. The 14 second time I deployed it, it was deployed immediately 15 while the subject was still being tased with the 16 other -- with the first cartridge.</b></p> <p>17 Q. I want to make sure I understand that. So March of 18 2014 you deployed the Taser. Did the two darts hit the 19 subject?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Do they stay in the subject?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. And then you fired it again, or did you deploy 24 the cartridge -- the second cartridge?</p> <p>25 <b>A. The second cartridge was fired immediately upon firing</b></p>	<p style="text-align: right;">Page 40</p> <p>1 <b>A. He was as the first cartridge was --</b></p> <p>2 Q. Because he has another two probes there, it's still 3 going to complete the circuit?</p> <p>4 <b>A. Yes. He was being tased from the first cartridge.</b></p> <p>5 Q. Was the subject injured in that incident?</p> <p>6 <b>A. No, he was not.</b></p> <p>7 Q. What about in the first incident in May of 2013?</p> <p>8 <b>A. He was not.</b></p> <p>9 Q. And did the Taser deployment seem to control the 10 situation during this domestic assault incident in 11 March of 2014?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And did it seem to control the situation even just from 14 the first cartridge deployment?</p> <p>15 <b>A. Can you rephrase that question?</b></p> <p>16 Q. Sure. In March of 2014 you deployed both cartridges, 17 correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. One right after the other --</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. -- or was it at the same time?</p> <p>22 <b>A. It was within a second when the second one went off.</b></p> <p>23 Q. And both would have fired. He was receiving jolts from 24 both, correct?</p> <p>25 <b>A. No, he was receiving it from one. Only one of the</b></p>

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<p style="text-align: right;">Page 41</p> <p>1 cartridges went into him.</p> <p>2 Q. Right. For five seconds?</p> <p>3 A. Yes.</p> <p>4 Q. And that controlled the situation.</p> <p>5 A. Yes.</p> <p>6 Q. You were able to arrest him and take control.</p> <p>7 A. Yes.</p> <p>8 Q. And when you say this person was fighting with this</p> <p>9 other officer, were they throwing punches?</p> <p>10 A. He was grabbing him, trying to take him down to the</p> <p>11 ground.</p> <p>12 Q. Okay. So it was a physical altercation between the</p> <p>13 subject and the other police officer.</p> <p>14 A. Yes.</p> <p>15 Q. And then the next time you deployed a Taser would have</p> <p>16 been with Mr. Kapuscinski?</p> <p>17 A. Yes.</p> <p>18 Q. Up until the point in time where you deployed the Taser</p> <p>19 on Mr. Kapuscinski, did anyone from the department</p> <p>20 review with you your prior two Taser deployments?</p> <p>21 A. Do you mean go over them with me or review --</p> <p>22 Q. Review your reports --</p> <p>23 A. Yes.</p> <p>24 Q. -- go over them with you --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 43</p> <p>1 A. No.</p> <p>2 Q. Are you aware of any officer being accused of not</p> <p>3 properly using their Taser?</p> <p>4 A. No.</p> <p>5 Q. All right. Now, the Kapuscinski incident occurred in</p> <p>6 April of 2015, correct?</p> <p>7 A. Yes.</p> <p>8 Q. I believe on April the 16th?</p> <p>9 A. I believe so.</p> <p>10 Q. Early morning hours?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. Up until the time you first hear information</p> <p>13 about this over the radio, which we'll talk about in a</p> <p>14 second, did you know who David Kapuscinski was?</p> <p>15 A. No, I did not.</p> <p>16 Q. Did you ever see the guy before April the 16th of 2015?</p> <p>17 A. Not that I know of.</p> <p>18 Q. Did you ever even see the name listed anywhere prior to</p> <p>19 April 16 of 2015?</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. All right. And if Mr. Kapuscinski were to have any</p> <p>22 type of criminal record, criminal background, you</p> <p>23 wouldn't know about it because you didn't know that guy</p> <p>24 on April the 16th of 2015 up until the time that you</p> <p>25 interacted with him, fair?</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. -- discuss it with you, anything?</p> <p>2 A. My reports were reviewed, yes.</p> <p>3 Q. And every time you use a Taser in the line of duty, you</p> <p>4 fill out a Taser use report?</p> <p>5 A. Yes.</p> <p>6 Q. Any other documentation or reports you fill out when</p> <p>7 you deploy a Taser?</p> <p>8 A. We write our police report and the Taser use report.</p> <p>9 Q. And what do you recall your supervisors or anyone else</p> <p>10 at the department discussing with you about these other</p> <p>11 two deployments that we just discussed?</p> <p>12 A. I don't recall anything.</p> <p>13 Q. Was anyone ever critical of the way that you used or</p> <p>14 managed your Taser when deployed in the line of duty?</p> <p>15 A. I don't recall if they were.</p> <p>16 Q. Do you know if anyone commented or was critical of</p> <p>17 deploying both cartridges in March of 2014?</p> <p>18 A. If they were, I don't recall.</p> <p>19 Q. Up until the time that you had your interaction with</p> <p>20 Mr. Kapuscinski, are you aware of anyone being injured</p> <p>21 from the use of a Taser from anyone at the Rockwood</p> <p>22 Police Department?</p> <p>23 A. No.</p> <p>24 Q. Are you aware or did you hear of anyone complaining</p> <p>25 that they were tased unnecessarily or excessively?</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And even after your interaction with him, you</p> <p>3 had no idea or understanding as to what his background</p> <p>4 was, fair to say?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. What shift were you working?</p> <p>7 A. The night shift.</p> <p>8 Q. Which is from when to when?</p> <p>9 A. 7:00 p.m. to 7:00 a.m.</p> <p>10 Q. Is that your typical shift?</p> <p>11 A. At the time, yes.</p> <p>12 Q. And when you worked the night shift for the Rockwood</p> <p>13 PD, is there anyone else working that night shift?</p> <p>14 A. At that time, no.</p> <p>15 Q. That changed at some time?</p> <p>16 A. With our department, with the size that we are and our</p> <p>17 turnover rate and bringing people in and training them,</p> <p>18 most of the time we do not have a second officer on</p> <p>19 night shift. It's preferred that we do, but we most of</p> <p>20 the time do not.</p> <p>21 Q. And that's even the current practice?</p> <p>22 A. Currently we do have somebody on the night shift -- or</p> <p>23 a second car on the night shift.</p> <p>24 Q. All right. Back in 2015, how many officers were on the</p> <p>25 day shift?</p>

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<p style="text-align: right;">Page 45</p> <p>1 <b>A. On the day shift at that time I believe one.</b></p> <p>2 Q. Okay. So that was the usual staffing, one officer on</p> <p>3 the day shift from 7a to 7p and one officer at night</p> <p>4 from 7p to 7a.</p> <p>5 <b>A. One uniformed officer on the day shift, yes.</b></p> <p>6 Q. So that implies there's non-uniformed officers.</p> <p>7 Explain that, please.</p> <p>8 <b>A. There is a detective and a chief who work during the</b></p> <p>9 <b>days.</b></p> <p>10 Q. And what is the -- what do they do during the day?</p> <p>11 <b>A. The chief runs day-to-day operations of the police</b></p> <p>12 <b>department or is the head of day-to-day operations of</b></p> <p>13 <b>the PD. The detective investigates crimes that were</b></p> <p>14 <b>reported.</b></p> <p>15 Q. All right. And so what do you typically do during a</p> <p>16 night shift for the Rockwood PD from 7p to 7a?</p> <p>17 <b>A. We respond to calls and make traffic stops if needed.</b></p> <p>18 Q. And if you're not responding to a specific call, what</p> <p>19 do you typically do?</p> <p>20 <b>A. Patrol the city.</b></p> <p>21 Q. And before you got the call on Mr. Kapuscinski's</p> <p>22 incident, where were you right before that?</p> <p>23 <b>A. I believe I was at Carlson High School.</b></p> <p>24 Q. By the way, how tall are you?</p> <p>25 <b>A. I believe I'm about five-eleven.</b></p>	<p style="text-align: right;">Page 47</p> <p>1 Q. And why were you at Carlson High School?</p> <p>2 <b>A. I was speaking with Officer Robinson.</b></p> <p>3 Q. And Officer Robinson is who?</p> <p>4 <b>A. He's a police officer for the city of Gibraltar.</b></p> <p>5 Q. And why were you speaking with Officer Robinson at</p> <p>6 Carlson High School as opposed to any other location</p> <p>7 that night?</p> <p>8 <b>A. It's just a centralized location between our cities.</b></p> <p>9 Q. I mean, is Carlson High School a usual spot for you to</p> <p>10 locate yourself during your shift?</p> <p>11 <b>A. Sometimes I would speak with Gibraltar officers there,</b></p> <p>12 <b>yes.</b></p> <p>13 Q. Okay. That's the spot you usually go to to speak to</p> <p>14 other Gibraltar officers.</p> <p>15 <b>A. Sometimes, yes.</b></p> <p>16 Q. Any other reason why you would be at Carlson High</p> <p>17 School while on duty other than to talk to Gibraltar</p> <p>18 officers?</p> <p>19 <b>A. If I'm called to assist them there.</b></p> <p>20 Q. Okay. If there happens to be a specific run there,</p> <p>21 correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. But that wasn't the case --</p> <p>24 <b>A. No.</b></p> <p>25 Q. -- this evening.</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. How much do you weigh?</p> <p>2 <b>A. At the time of this incident or now?</b></p> <p>3 Q. I'm going to have to put -- I'm going to have you put</p> <p>4 this on the record. How much do you weigh now?</p> <p>5 <b>A. Currently, approximately 225 pounds.</b></p> <p>6 Q. And at the time of the incident?</p> <p>7 <b>A. I was probably about 200 pounds.</b></p> <p>8 Q. Just means you're lifting a lot, right?</p> <p>9 <b>A. Lifting a lot of donuts.</b></p> <p>10 Q. Okay. You left- or right-handed?</p> <p>11 <b>A. Right-handed.</b></p> <p>12 Q. And when you use a Taser, I take it you use your right</p> <p>13 hand, correct?</p> <p>14 <b>A. I -- the Tasers are on my left side. I grab the Taser</b></p> <p>15 <b>with my left hand.</b></p> <p>16 Q. Do you deploy it with your left hand?</p> <p>17 <b>A. I believe I would deploy it -- I would take my Taser</b></p> <p>18 <b>out with my left hand, put both hands on it, I would</b></p> <p>19 <b>pull the trigger with my right hand.</b></p> <p>20 Q. How long were you up at Carlson High School before you</p> <p>21 heard about this call on the radio involving</p> <p>22 Mr. Kapuscinski?</p> <p>23 <b>A. I'm not sure.</b></p> <p>24 Q. Best estimate.</p> <p>25 <b>A. I would have no idea. A few minutes?</b></p>	<p style="text-align: right;">Page 48</p> <p>1 <b>A. No.</b></p> <p>2 Q. Okay. Do you recall what day during the week this was?</p> <p>3 <b>A. I do not.</b></p> <p>4 Q. Does Thursday morning ring a bell?</p> <p>5 <b>A. I believe that's right.</b></p> <p>6 Q. And do you know why Officer Robinson was up at Carlson</p> <p>7 High School?</p> <p>8 <b>A. Just to talk to me.</b></p> <p>9 Q. Who got there first?</p> <p>10 <b>A. I don't recall.</b></p> <p>11 Q. Was this a prearranged thing?</p> <p>12 <b>A. I think it was just a spur of the moment meet-up.</b></p> <p>13 Q. And what was the purpose in meeting up?</p> <p>14 <b>A. Just social.</b></p> <p>15 Q. And did you do the cop thing where you parked your cars</p> <p>16 in opposite directions so you could be right next to</p> <p>17 each other and talk to each other through your open</p> <p>18 windows?</p> <p>19 MS. MCGIFFERT: Place an objection as to</p> <p>20 form.</p> <p>21 MS. FORBUSH: Join.</p> <p>22 MS. MCGIFFERT: Go ahead.</p> <p>23 <b>THE WITNESS: I believe so.</b></p> <p>24 BY MR. WEGLARZ:</p> <p>25 Q. And do you recall what you were discussing?</p>



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<p style="text-align: right;">Page 49</p> <p>1 <b>A. No.</b></p> <p>2 Q. And then at some point you hear something over the</p> <p>3 radio pertaining to an incident involving</p> <p>4 Mr. Kapuscinski?</p> <p>5 <b>A. I didn't know it was Mr. Kapuscinski at the time, but</b></p> <p>6 <b>yes.</b></p> <p>7 Q. Okay. And tell me what you heard.</p> <p>8 <b>A. The Gibraltar dispatcher put a call over the radio of a</b></p> <p>9 <b>domestic violence incident in progress in Gibraltar.</b></p> <p>10 Q. And did the dispatcher really say violence or just a</p> <p>11 domestic issue going on?</p> <p>12 <b>A. I don't recall.</b></p> <p>13 Q. Anything else you recall hearing over the radio?</p> <p>14 <b>A. Not at this time, no.</b></p> <p>15 Q. And you were being requested to go out there and check</p> <p>16 it out?</p> <p>17 <b>A. Yes. Officer Robinson requested me.</b></p> <p>18 Q. This was a call actually to Officer Robinson? It was</p> <p>19 through the Gibraltar dispatch?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And did you actually hear it over his radio?</p> <p>22 <b>A. I heard it over both of our radios.</b></p> <p>23 Q. What channel was that on?</p> <p>24 <b>A. I'm not sure.</b></p> <p>25 Q. Gibraltar and Rockwood have their own dispatchers,</p>	<p style="text-align: right;">Page 51</p> <p>1 Gibraltar PD?</p> <p>2 <b>A. The Gibraltar dispatcher advised Officer Robinson that</b></p> <p>3 <b>she would be contacting Trenton. Officer Robinson had</b></p> <p>4 <b>asked me to go over there while we were talking. He</b></p> <p>5 <b>then advised their dispatcher that I was coming there</b></p> <p>6 <b>with him.</b></p> <p>7 Q. How many times have you assisted Officer Robinson on</p> <p>8 calls or runs?</p> <p>9 <b>A. A lot.</b></p> <p>10 Q. Best estimate as to how many times to the present date?</p> <p>11 <b>A. I honestly don't know if I could give you an estimate.</b></p> <p>12 <b>It's been a lot. We work with each other a lot.</b></p> <p>13 Q. Do you still work the night shift?</p> <p>14 <b>A. Not currently.</b></p> <p>15 Q. And would you assist Officer Robinson -- like back in</p> <p>16 2015, was this a nightly thing, a weekly thing, a</p> <p>17 monthly thing?</p> <p>18 <b>A. I would say we assist Gibraltar probably weekly, maybe</b></p> <p>19 <b>more.</b></p> <p>20 Q. Once or twice a week?</p> <p>21 <b>A. That's probably a good estimate.</b></p> <p>22 Q. And if Officer Robinson gets a call during the midnight</p> <p>23 shift, does he usually ask for your assistance if he</p> <p>24 knows that you're on duty?</p> <p>25 <b>A. Me specifically?</b></p>
<p style="text-align: right;">Page 50</p> <p>1 correct?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. And if Gibraltar gets a call to go out and check out a</p> <p>4 domestic incident, does Rockwood usually go out to</p> <p>5 that?</p> <p>6 <b>A. Sometimes, yes.</b></p> <p>7 Q. And can you tell me why sometimes and sometimes not?</p> <p>8 <b>A. We would if they needed assistance, if they only had</b></p> <p>9 <b>one car on. If they had multiple officers working and</b></p> <p>10 <b>were able to handle it themselves, then they would not</b></p> <p>11 <b>call us.</b></p> <p>12 Q. Did Gibraltar have just one officer on duty at that</p> <p>13 time?</p> <p>14 <b>A. I believe so.</b></p> <p>15 Q. And that was Officer Robinson?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Was he working the same type of shift as you, 7p to 7a?</p> <p>18 <b>A. I believe so.</b></p> <p>19 Q. Did dispatch advise that the Trenton PD were also going</p> <p>20 to be involved with the run?</p> <p>21 <b>A. I believe so.</b></p> <p>22 Q. And did you hear that over the radio?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And so was that supposed to be the assistance being</p> <p>25 provided, the Trenton PD assisting and backing up the</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Yeah.</p> <p>2 <b>A. I don't think he would ask for me specifically. Just a</b></p> <p>3 <b>Rockwood police officer or just a backup officer.</b></p> <p>4 Q. Okay. That's the usual routine.</p> <p>5 <b>A. Between us and Gibraltar, yes.</b></p> <p>6 Q. Okay. All right. So after getting that call, you then</p> <p>7 go to the apartment complex?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And that was on Middle Gibraltar --</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. -- correct? Did you have the lights and siren</p> <p>12 activated?</p> <p>13 <b>A. I do not believe so.</b></p> <p>14 Q. And there is an in-car video, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. With audio.</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And the audio is captured through the microphone that</p> <p>19 is on your person?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And is that in-car video always rolling?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. As is the audio?</p> <p>24 <b>A. The audio is not.</b></p> <p>25 Q. Okay. And what determines when the audio goes on or</p>

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<p style="text-align: right;">Page 53</p> <p>1 goes off?</p> <p>2 <b>A. The audio would go on if I'm making contact with a</b></p> <p>3 <b>person.</b></p> <p>4 Q. So the microphone only goes on if you're actively</p> <p>5 speaking?</p> <p>6 <b>A. No. If I am out of the car making contact with a</b></p> <p>7 <b>person, I would turn my microphone on.</b></p> <p>8 Q. Okay. Is the microphone on while you're in the car?</p> <p>9 <b>A. It's not recording, no.</b></p> <p>10 Q. It only starts to record if you're outside of the car?</p> <p>11 <b>A. It starts to record when I hit the button to.</b></p> <p>12 Q. So it's manually controlled by you?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And you -- when do you turn the microphone on? What's</p> <p>15 your routine or policy?</p> <p>16 <b>A. The policy is to be recording any time that we're</b></p> <p>17 <b>making contact with somebody. I usually turn it on as</b></p> <p>18 <b>soon as I step out of my patrol car.</b></p> <p>19 Q. Having conversations with anyone through dispatch or</p> <p>20 radio communications, is that considered making</p> <p>21 contact?</p> <p>22 <b>A. Through radio communications, no.</b></p> <p>23 Q. Have you ever looked for the video of this incident</p> <p>24 from the time you get the call at Carlson up until the</p> <p>25 time that you arrive at the complex?</p>	<p style="text-align: right;">Page 55</p> <p>1 Officer Robinson. We walked towards the main entrance</p> <p>2 to the apartment complex where we were met by a highly,</p> <p>3 highly upset young child. The young child let us in,</p> <p>4 led us towards the stairs. Officer Robinson asked him</p> <p>5 which apartment it was, asked him if he could let us</p> <p>6 in. The child said that he was too scared, he was</p> <p>7 going to wait downstairs.</p> <p>8 We knocked on the door and were met by a</p> <p>9 young juvenile female who was extremely, extremely</p> <p>10 upset. Officer Robinson asked where the individuals</p> <p>11 were at. She just kept screaming, was highly upset.</p> <p>12 Could hear some sort of an altercation taking place in</p> <p>13 a back room in the apartment where we then made entry</p> <p>14 into the apartment.</p> <p>15 Once we entered into the back bedroom where</p> <p>16 they were located at, we saw a male who was completely</p> <p>17 nude, and he had a female's head -- neck between his</p> <p>18 thighs, was squeezing while yelling something along the</p> <p>19 lines of "I'm going to kill her, I'm going to kill</p> <p>20 you." He was threatening to kill her. Officer</p> <p>21 Robinson --</p> <p>22 Q. I'll let you finish if you want. I was going to stop</p> <p>23 you there and maybe ask you some follow-up, but if you</p> <p>24 want to get out the whole narrative right now too,</p> <p>25 that's up to you.</p>
<p style="text-align: right;">Page 54</p> <p>1 <b>A. Have I ever watched it?</b></p> <p>2 Q. Yeah.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Is there any audio in it?</p> <p>5 <b>A. No.</b></p> <p>6 Q. When was the last time you've watched that video?</p> <p>7 <b>A. I've watched it over the past few days.</b></p> <p>8 Q. Okay. How long did it take you to get from Carlson</p> <p>9 High School to the apartment complex?</p> <p>10 <b>A. I don't recall an exact time.</b></p> <p>11 Q. Ballpark.</p> <p>12 <b>A. Couple minutes.</b></p> <p>13 Q. And you were behind Officer Robinson's vehicle?</p> <p>14 <b>A. I believe so, yes.</b></p> <p>15 Q. Do you know if Officer Robinson's vehicle has a video,</p> <p>16 in-car video?</p> <p>17 <b>A. I do not know.</b></p> <p>18 Q. And was this really Officer Robinson's run?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. He was the one taking charge, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. You were there to back up?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And once you get to the scene, tell me what happens.</p> <p>25 <b>A. We arrived on scene. I was in my patrol car as was</b></p>	<p style="text-align: right;">Page 56</p> <p>1 MS. MCGIFFERT: Well, you know, this endless</p> <p>2 narrative I think is not the most appropriate way to</p> <p>3 proceed, so if you want to do some follow-up questions</p> <p>4 and then let him continue, as long as it's understood</p> <p>5 he's not finished.</p> <p>6 MR. WEGLARZ: Of course.</p> <p>7 BY MR. WEGLARZ:</p> <p>8 Q. All right. Once you stop your vehicle and get out of</p> <p>9 the car when you're at the complex, did you then</p> <p>10 activate the microphone?</p> <p>11 <b>A. Yes. At some point while walking in -- I don't exactly</b></p> <p>12 <b>remember at which point I hit the button where I was</b></p> <p>13 <b>at, but I activated it.</b></p> <p>14 Q. Do you believe you activated the record button at least</p> <p>15 at the time when you encountered the young boy outside?</p> <p>16 <b>A. I couldn't recall if it was on while we were talking to</b></p> <p>17 <b>him outside or not.</b></p> <p>18 Q. All right. And then what you have to do is first get</p> <p>19 into the apartment building, right? There's a main</p> <p>20 door there into the building, correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And then from there you would have to enter the unit?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And that was Unit 16?</p> <p>25 <b>A. I believe so, yes.</b></p>



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<p style="text-align: right;">Page 57</p> <p>1 Q. And that was an upstairs unit?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. So I take it you had to go upstairs to find Unit 16,</p> <p>4 correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And was the door to Unit 16 open or closed?</p> <p>7 <b>A. It was closed.</b></p> <p>8 Q. How did you know it was Unit 16, by the way?</p> <p>9 <b>A. The boy that let us in, it's the one that he told us</b></p> <p>10 <b>to.</b></p> <p>11 Q. You guys didn't just barge into Unit 16. I take it you</p> <p>12 knocked, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. And if you listen to that video, slash, audio, you can</p> <p>15 hear knocking, correct?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. And you recall hearing that just very recently when you</p> <p>18 were listening to it yourself?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. Okay. And in response to the knocking, is this when</p> <p>21 this young girl opened the door?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And that girl was crying and upset?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And someone asked, "Where's mom and dad at?" Was that</p>	<p style="text-align: right;">Page 59</p> <p>1 <b>A. No.</b></p> <p>2 Q. Did you have a secondary firearm?</p> <p>3 <b>A. No. I take that back. I don't recall if I did at the</b></p> <p>4 <b>time or not.</b></p> <p>5 Q. Do you recall the young girl saying "please don't take</p> <p>6 us away" at this initial meeting at the door?</p> <p>7 <b>A. I don't know if she was saying "take us away." I know</b></p> <p>8 <b>she was saying something. I don't know if it was "take</b></p> <p>9 <b>us" or "take him." I thought it was "please don't take</b></p> <p>10 <b>him away," but I don't recall the exact wording.</b></p> <p>11 Q. Do you recall either of the kids -- and there were two</p> <p>12 kids that were living in this unit, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. The one that you met outside initially and the young</p> <p>15 girl who answered the door, right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Do you remember them ever mentioning something to the</p> <p>18 effect of "don't take us away"?</p> <p>19 <b>A. Take -- I don't recall if they said "take us away." I</b></p> <p>20 <b>don't recall that.</b></p> <p>21 Q. All right. Did the young child who answered the door</p> <p>22 ever tell you where mom and dad were?</p> <p>23 <b>A. He just said in the apartment, and then he was too</b></p> <p>24 <b>scared to go up there with us.</b></p> <p>25 Q. I'm talking about the girl who answered the door.</p>
<p style="text-align: right;">Page 58</p> <p>1 you or Officer Robinson?</p> <p>2 <b>A. I believe Officer Robinson asked that.</b></p> <p>3 Q. By the way, what are you wearing at this time? I take</p> <p>4 it you're in full uniform?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Are you armed?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And what do you have on you?</p> <p>9 <b>A. Along the lines of a firearm you mean?</b></p> <p>10 Q. Yeah.</p> <p>11 <b>A. I have a firearm, Glock 22, I have a Taser.</b></p> <p>12 Q. Do you have a Glock 22, is that what you said?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And where is that located on your person?</p> <p>15 <b>A. On my right hip.</b></p> <p>16 Q. And that's visible --</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. -- correct? And the Taser's on your left hip.</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Any other weapons or accessories that you had on you?</p> <p>21 <b>A. Accessories, I had two handcuffs, I had a -- on my back</b></p> <p>22 <b>was a pouch with rubber gloves. I have on my front a</b></p> <p>23 <b>little pouch that holds keys, my car keys, and I</b></p> <p>24 <b>believe that's all I had on.</b></p> <p>25 Q. Did you have a baton?</p>	<p style="text-align: right;">Page 60</p> <p>1 <b>A. Oh, the girl who answered the door, I don't believe she</b></p> <p>2 <b>did, no.</b></p> <p>3 Q. In fact, the boy that you encountered outside, he never</p> <p>4 went in. He didn't follow you into the apartment.</p> <p>5 <b>A. No.</b></p> <p>6 Q. He stayed outside.</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And then when the girl answered the door, Robinson</p> <p>9 asked, "Where's mom and dad at," but the girl doesn't</p> <p>10 really tell you where, correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. She's reluctant to tell you.</p> <p>13 <b>A. Correct.</b></p> <p>14 MS. MCGIFFERT: I'm just going to place an</p> <p>15 objection as to foundation in terms of what her mindset</p> <p>16 was.</p> <p>17 BY MR. WEGLARZ:</p> <p>18 Q. All right. And so then what happens at that point</p> <p>19 after this brief interaction with the little girl?</p> <p>20 <b>A. After we were speaking with the little girl -- or while</b></p> <p>21 <b>we were speaking with the little girl, we hear some</b></p> <p>22 <b>kind of a struggle going on in the back bedroom.</b></p> <p>23 <b>Officer Robinson and I then made our way into the back</b></p> <p>24 <b>bedroom where we could then hear some screaming, a male</b></p> <p>25 <b>voice yelling "I'm going to kill you" or "I'm going to</b></p>

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<p style="text-align: right;">Page 61</p> <p>1 kill her," something along those lines.</p> <p>2 And we then saw that the male had the</p> <p>3 female's neck between his thighs. He was squeezing her</p> <p>4 neck while continuously yelling that he was going to</p> <p>5 "kill her" or "kill you." Officer Robinson then gave</p> <p>6 multiple loud verbal commands for him to get off of</p> <p>7 her, which he would not -- not comply with the</p> <p>8 commands.</p> <p>9 Q. I'm going to stop you there. Did you say you heard</p> <p>10 screaming in the back bedroom?</p> <p>11 A. I heard -- we heard a -- some sort of an</p> <p>12 altercation/commotion going on in the back bedroom. As</p> <p>13 we were getting closer and entering that room, we heard</p> <p>14 a male voice yelling.</p> <p>15 Q. Is that what drew you into the apartment when you heard</p> <p>16 this altercation, slash, commotion going on in the back</p> <p>17 bedroom?</p> <p>18 A. Yes.</p> <p>19 Q. But you didn't hear any screaming from that room at</p> <p>20 least at that point in time, right?</p> <p>21 A. Not originally that -- when we knocked on the door that</p> <p>22 I can recall.</p> <p>23 Q. Okay. When you knocked on the door or when Officer</p> <p>24 Robinson knocked on the door -- was it Officer Robinson</p> <p>25 who knocked on the door?</p>	<p style="text-align: right;">Page 63</p> <p>1 MS. MCGIFFERT: Are you finished?</p> <p>2 MR. WEGLARZ: I'm sorry, I thought he was.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. WEGLARZ:</p> <p>5 Q. If you feel that someone else or yourself are being</p> <p>6 physically threatened, then you're trained to draw your</p> <p>7 firearm, correct?</p> <p>8 A. If I feel myself or someone else life's in danger, yes.</p> <p>9 Q. At some point you do draw your Taser?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And do you recall physically where in the house</p> <p>12 you were when you first drew your Taser?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you believe you drew your Taser before you arrived</p> <p>15 in the back bedroom where the suspect and this other</p> <p>16 person were?</p> <p>17 A. I don't recall the exact time that I drew my Taser.</p> <p>18 Q. And to get to the back bedroom, you walked across a</p> <p>19 hallway, is that correct?</p> <p>20 A. I believe there was a front living room and then a</p> <p>21 small hallway and then the back bedroom.</p> <p>22 Q. Where along the floor plan of that apartment were you</p> <p>23 first able to see any occupants in that back bedroom?</p> <p>24 A. I don't recall when we first saw them. I don't recall</p> <p>25 where it was at.</p>
<p style="text-align: right;">Page 62</p> <p>1 A. I believe so.</p> <p>2 Q. Did you have your firearm drawn?</p> <p>3 A. No.</p> <p>4 Q. Did you have your Taser drawn?</p> <p>5 A. No.</p> <p>6 Q. What about Officer Robinson?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Neither firearm nor Taser was drawn at that time,</p> <p>9 correct?</p> <p>10 A. When we were knocking on the door, no.</p> <p>11 Q. All right. What about after the girl opens up the</p> <p>12 door? Either of those drawn?</p> <p>13 A. No.</p> <p>14 Q. Okay. What about when you heard the altercation or</p> <p>15 commotion coming from the back bedroom?</p> <p>16 A. At some point our Tasers were drawn. I don't know what</p> <p>17 point exactly that was at.</p> <p>18 Q. Did you ever draw your firearm?</p> <p>19 A. No.</p> <p>20 Q. Did Officer Robinson ever draw his firearm?</p> <p>21 A. No.</p> <p>22 Q. According to your training, when are you -- when are</p> <p>23 you trained to brandish your firearm?</p> <p>24 A. To protect life, serious bodily injury.</p> <p>25 Q. If you feel someone else is being --</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Was it -- did you see them -- did you see any part of</p> <p>2 them prior to you getting into the back bedroom?</p> <p>3 A. While we were walking, Officer Robinson was walking in</p> <p>4 front of me in the hallway. I was just following</p> <p>5 Officer Robinson. And then looking at Officer</p> <p>6 Robinson, I didn't see anybody -- couldn't see through</p> <p>7 him to see where people were at.</p> <p>8 Q. All right. And then I take it within a second or two</p> <p>9 you're in the back bedroom. It's not a long distance</p> <p>10 there, right?</p> <p>11 A. A brief period of time, yes.</p> <p>12 Q. All right. And tell me your first observation of the</p> <p>13 occupants in that back bedroom.</p> <p>14 A. My first observation of them where a -- it was a nude</p> <p>15 male with a female's neck in between his legs.</p> <p>16 Q. All right. I'm going to stop you there. Nude male.</p> <p>17 Is that completely nude?</p> <p>18 A. Yes.</p> <p>19 Q. Buck naked.</p> <p>20 A. Yes.</p> <p>21 Q. Not even covered with a blanket or a sheet.</p> <p>22 A. Correct.</p> <p>23 Q. He obviously was an unarmed nude male?</p> <p>24 A. Yes.</p> <p>25 Q. How big did he appear to be?</p>

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<p style="text-align: right;">Page 65</p> <p>1 <b>A. He was appeared to be quite large. About probably my</b>  2 <b>height but muscular.</b>  3 Q. The autopsy report and the medical records I believe  4 list him at five-nine, 150 pounds. Does that sound  5 about right?  6 MS. FORBUSH: Object to foundation.  7 MS. MCGIFFERT: Join.  8 BY MR. WEGLARZ:  9 Q. Go ahead.  10 MS. FORBUSH: If you know.  11 <b>THE WITNESS: I'm not sure. I couldn't</b>  12 <b>estimate his weight. I never saw him standing straight</b>  13 <b>up. I couldn't estimate his height either.</b>  14 BY MR. WEGLARZ:  15 Q. Good point. I'll keep this digression very brief. I  16 take it you work out?  17 <b>A. Not as often as I should.</b>  18 Q. Of course. Well, we all say that. I don't want to act  19 like I'm in high school again, but I guess I have to  20 ask you, what do you bench?  21 <b>A. Honestly, I don't know.</b>  22 Q. Back then where were you?  23 <b>A. Honestly, I don't know.</b>  24 Q. I take it that's part of your workout routine?  25 <b>A. I do more of a cardio than weightlifting.</b></p>	<p style="text-align: right;">Page 67</p> <p>1 <b>A. I do not believe so, no.</b>  2 Q. And how far down does the scrub top go?  3 <b>A. I don't recall. I saw her laying on the bed before she</b>  4 <b>ran out of the room.</b>  5 Q. I'm not going to mark this yet. I'm going to show you  6 that photo. Is that a picture of the back bedroom  7 where you saw these two people?  8 <b>A. I believe so, yes.</b>  9 MR. WEGLARZ: So I will mark it.  10 (At 10:37 a.m., Exhibit 2 marked)  11 BY MR. WEGLARZ:  12 Q. And we have marked as Exhibit 2 a photo of the back  13 bedroom that we have just referenced. Where is the  14 nude male when you have your first observation of him?  15 <b>A. On the bed.</b>  16 Q. All right.  17 MS. FORBUSH: Can I just see what photograph  18 you're looking at?  19 MR. WEGLARZ: Sure.  20 MS. FORBUSH: Okay. Thank you.  21 BY MR. WEGLARZ:  22 Q. So he's on top of the bed, and is the bed basically as  23 we see it here in Exhibit Number 2? It looks like  24 there's a light-colored blanket or comforter underneath  25 an even lighter-colored or yellow-colored --</p>
<p style="text-align: right;">Page 66</p> <p>1 Q. You don't do any weightlifting?  2 <b>A. I do, but more of cardio. I don't know what I would</b>  3 <b>bench honestly.</b>  4 Q. Can you bench 200?  5 <b>A. That's possible.</b>  6 Q. 250?  7 <b>A. Probably not. I'm not sure.</b>  8 Q. Do they have any workout requirements with the  9 department?  10 <b>A. No.</b>  11 Q. All right. So you see this nude male in the back  12 bedroom, and you also see another person, correct? A  13 female?  14 <b>A. Yes.</b>  15 Q. And she's wearing a shirt?  16 <b>A. She's wearing a shirt, yes.</b>  17 Q. And only a shirt?  18 <b>A. Yes.</b>  19 Q. And what kind of a shirt?  20 <b>A. I believe it was -- I would describe it as scrubs.</b>  21 Q. Scrub top?  22 <b>A. Yes.</b>  23 Q. Do you recall the color?  24 <b>A. I believe it was blue.</b>  25 Q. Does she have underwear on?</p>	<p style="text-align: right;">Page 68</p> <p>1 <b>A. I don't recall what was on the bed.</b>  2 Q. All right. So the nude male is on the bed, and how is  3 he positioned on the bed?  4 <b>A. He's positioned with the female's head between his</b>  5 <b>thighs. I don't remember exactly which way he was</b>  6 <b>facing.</b>  7 Q. Okay. Is he on his side, is he on his --  8 <b>A. I believe he was --</b>  9 Q. -- hands and knees, on his back?  10 <b>A. He was on I believe either his back or his side. He</b>  11 <b>was not on his hands and knees.</b>  12 MS. MCGIFFERT: You're saying he was not?  13 <b>THE WITNESS: Not on his hands and knees.</b>  14 BY MR. WEGLARZ:  15 Q. And is his head -- his head is where? Is his head  16 closer to the back wall here where we see the window or  17 --  18 <b>A. I don't recall which way he was turned facing.</b>  19 Q. Okay.  20 <b>A. I do not recall.</b>  21 Q. All right. And was he positioned length-wise --  22 <b>A. I believe --</b>  23 Q. -- in the bed or perpendicular to it?  24 <b>A. He would have been more perpendicular I do believe. I</b>  25 <b>don't recall either of their exact positioning. I was</b></p>

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<p style="text-align: right;">Page 69</p> <p>1 focused more on -- I was observing her head and neck in</p> <p>2 between his thighs.</p> <p>3 Q. Meaning his body was, if you had to describe it, more</p> <p>4 parallel to the back wall that we see with the window</p> <p>5 as opposed to the adjoining wall.</p> <p>6 A. I'm not for certain.</p> <p>7 Q. What parts of the nude male's body were in contact with</p> <p>8 the bed?</p> <p>9 A. It was either his side or his back or his -- I do not</p> <p>10 recall --</p> <p>11 Q. Sure.</p> <p>12 A. -- but I believe he was on one of his sides.</p> <p>13 Q. All right. And tell me the position of the female with</p> <p>14 respect to the bed. Is she on her hands and knees?</p> <p>15 A. She was laying in the bed kind of I believe</p> <p>16 perpendicular with him with his -- her head in between</p> <p>17 his neck.</p> <p>18 MS. MCGIFFERT: His neck?</p> <p>19 THE WITNESS: I'm sorry.</p> <p>20 MS. MCGIFFERT: Take your time.</p> <p>21 THE WITNESS: Her neck in between his thighs.</p> <p>22 They're laying I believe -- if I can refer to one of</p> <p>23 the reports how I described it.</p> <p>24 BY MR. WEGLARZ:</p> <p>25 Q. Sure.</p>	<p style="text-align: right;">Page 71</p> <p>1 neck.</p> <p>2 Q. Is she trying to remove -- was it like a grip, like he</p> <p>3 was applying pressure?</p> <p>4 A. It appeared so, yes.</p> <p>5 Q. Did she seem to be trying to remove her head or neck</p> <p>6 out of this position or grip?</p> <p>7 A. I don't recall if she was actively trying to push off,</p> <p>8 but he had his thighs around her neck squeezing.</p> <p>9 Q. Did the female say anything?</p> <p>10 A. At that time it appeared that she could not talk.</p> <p>11 Q. Okay. Tell me, what did you see or observe to conclude</p> <p>12 that?</p> <p>13 A. The male had his thighs wrapped around her neck</p> <p>14 squeezing, making it difficult for her to breathe or</p> <p>15 talk.</p> <p>16 Q. Did you think she was having difficulty breathing?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Just from you seeing the thighs around her neck,</p> <p>19 or did you hear something to suggest that as well?</p> <p>20 A. I do believe I heard some gasping noises, if I can</p> <p>21 refer to my report. If I can refer to the state police</p> <p>22 interview report of me. There were gasping noises</p> <p>23 coming from when we entered the apartment -- or the</p> <p>24 bedroom. I could hear gasping noises coming from her.</p> <p>25 It appeared that she was attempting to get air and</p>
<p style="text-align: right;">Page 70</p> <p>1 A. The only way I honestly know how to describe it, and</p> <p>2 not to be as crude and immature about it, what you</p> <p>3 would call the 69 sexual position, front up.</p> <p>4 Q. I was just going to say, it sounds like you're</p> <p>5 describing the 69 position.</p> <p>6 A. Yes. One of my statements with the state police,</p> <p>7 that's exactly how I described the positioning.</p> <p>8 Q. If that's what you recall, that's what you recall.</p> <p>9 A. That's just how I recall them. I don't remember if he</p> <p>10 was on his back or side. I just remember her neck</p> <p>11 between his thighs.</p> <p>12 Q. Is she performing a sexual act?</p> <p>13 A. At that time I don't believe so, no.</p> <p>14 Q. Did you ever see her performing a sexual act on him?</p> <p>15 A. No.</p> <p>16 Q. When you first walked in, though, did it appear to be</p> <p>17 that you were walking in on a sexual act?</p> <p>18 A. It appeared I was walking in on an assault.</p> <p>19 Q. And so her head and neck is between his thighs.</p> <p>20 A. Yes.</p> <p>21 Q. And are his thighs making contact with her head or</p> <p>22 neck?</p> <p>23 A. Her neck, yes.</p> <p>24 Q. And how so?</p> <p>25 A. Her neck is between his thighs and he's squeezing her</p>	<p style="text-align: right;">Page 72</p> <p>1 having a difficult time.</p> <p>2 Q. When you walked into that back bedroom, was her face --</p> <p>3 could you see any part of her face?</p> <p>4 A. Yes.</p> <p>5 Q. So her face was --</p> <p>6 A. Her face would have been looking at us I believe.</p> <p>7 Q. Could you see her mouth?</p> <p>8 A. I believe so.</p> <p>9 Q. And she didn't have anything on or in her mouth?</p> <p>10 A. Not that I recall, no.</p> <p>11 Q. And so then you wouldn't be able to see</p> <p>12 Mr. Kapuscinski's face, correct, because he was facing</p> <p>13 the opposite way?</p> <p>14 MS. MCGIFFERT: Place an objection as to</p> <p>15 foundation.</p> <p>16 THE WITNESS: I believe I was able to see his</p> <p>17 face because he was turning to yell when we walked in</p> <p>18 that he was going to "kill her" or "kill you," one of</p> <p>19 the variations of that.</p> <p>20 BY MR. WEGLARZ:</p> <p>21 Q. Do you believe Mr. Kapuscinski was aware that there</p> <p>22 were two police officers in the bedroom --</p> <p>23 A. Yes.</p> <p>24 Q. -- when you first got there?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 73</p> <p>1 Q. And how do you know that?</p> <p>2 A. <b>Because Officer Robinson was giving very loud verbal</b></p> <p>3 <b>commands for him to get off of her.</b></p> <p>4 Q. Was Mr. Kapuscinski on top of this female?</p> <p>5 A. <b>I don't recall if he was on top. I believe that they</b></p> <p>6 <b>were kind of side to side.</b></p> <p>7 Q. He was in a submissive position --</p> <p>8 A. <b>No.</b></p> <p>9 Q. -- correct?</p> <p>10 A. <b>No.</b></p> <p>11 Q. All right. So he wasn't on top of her, he was either</p> <p>12 side to side or, like you said, you thought he was</p> <p>13 either on his back or side, correct?</p> <p>14 A. <b>Yes. He was not on top of her, though.</b></p> <p>15 Q. And the command by Officer Robinson was to get off of</p> <p>16 her?</p> <p>17 A. <b>Yes.</b></p> <p>18 Q. Can you -- you know what I'm going to have you do? On</p> <p>19 Exhibit Number 2, can you diagram as best you can the</p> <p>20 position of the male and the female as you observed it</p> <p>21 when you first went back there?</p> <p>22 MS. McGIFFERT: I'm just going to place an</p> <p>23 objection as to foundation. I think he's already told</p> <p>24 you he was uncertain about their positions in</p> <p>25 relationship to the bed. I mean, I think that's</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. So you don't really recall the position enough even to</p> <p>2 draw a stick figure to show us the general position of</p> <p>3 him when you entered that bedroom.</p> <p>4 A. <b>He was facing one direction. She was facing one</b></p> <p>5 <b>direction with her --</b></p> <p>6 Q. Okay.</p> <p>7 A. <b>-- neck between his legs.</b></p> <p>8 Q. Sure. What direction was he facing?</p> <p>9 A. <b>I'm not 100 percent for sure on that.</b></p> <p>10 Q. Well, what direction was she facing?</p> <p>11 A. <b>The opposite direction, whichever that was.</b></p> <p>12 Q. But you can't tell me either way.</p> <p>13 A. <b>I don't recall the exact positioning.</b></p> <p>14 MS. FORBUSH: Todd, when you're at a good</p> <p>15 breaking point --</p> <p>16 MR. WEGLARZ: Yeah. Just a minute.</p> <p>17 BY MR. WEGLARZ:</p> <p>18 Q. And do you recall this male saying that he's going to</p> <p>19 kill her?</p> <p>20 A. <b>Yes. A variation of -- it was either "I'm going to</b></p> <p>21 <b>kill her" or "I'm going to kill you."</b></p> <p>22 Q. Okay. And did you hear this as soon as you got into</p> <p>23 that back bedroom?</p> <p>24 A. <b>Yes.</b></p> <p>25 Q. How many times did he say that?</p>
<p style="text-align: right;">Page 74</p> <p>1 already in the record, so --</p> <p>2 MS. FORBUSH: You're asking him to speculate.</p> <p>3 He said he didn't recall.</p> <p>4 BY MR. WEGLARZ:</p> <p>5 Q. Are you telling me that your memory of how they were</p> <p>6 positioned in this back bedroom is such that you can't</p> <p>7 even try to diagram it for me even with a stick figure?</p> <p>8 A. <b>I wouldn't feel comfortable diagramming with my very,</b></p> <p>9 <b>very limited art skills where they were at. I believe</b></p> <p>10 <b>that he was in the one position that I described. I</b></p> <p>11 <b>don't know if I could draw it out and diagram for you.</b></p> <p>12 Q. Well, the one position that you believe he was in, can</p> <p>13 you just do a stick diagram for me?</p> <p>14 MS. McGIFFERT: Same objection.</p> <p>15 MS. FORBUSH: Join.</p> <p>16 <b>THE WITNESS: He was just on one side.</b></p> <p>17 MS. McGIFFERT: Counsel, you can't force him</p> <p>18 to draw if he said that he's not comfortable doing it,</p> <p>19 so putting the pen over next to him is -- I don't know</p> <p>20 what that's supposed to accomplish.</p> <p>21 MR. WEGLARZ: I'm trying to assist him. He</p> <p>22 doesn't have a pen.</p> <p>23 MS. McGIFFERT: I don't think the problem is</p> <p>24 him not having pen, based on his testimony.</p> <p>25 BY MR. WEGLARZ:</p>	<p style="text-align: right;">Page 76</p> <p>1 A. <b>Multiple times.</b></p> <p>2 Q. Where are you standing in that back bedroom when you</p> <p>3 hear this?</p> <p>4 A. <b>In the doorway.</b></p> <p>5 Q. And where you were standing, is that area depicted at</p> <p>6 all in Exhibit Number 2 there?</p> <p>7 A. <b>It does not show the doorway, no.</b></p> <p>8 Q. And when you say in the doorway, are you talking</p> <p>9 literally right in the doorway, or are you a foot to</p> <p>10 2 feet in, a foot to 2 feet out?</p> <p>11 A. <b>I couldn't give you an exact measurement. Somewhere in</b></p> <p>12 <b>the area that whoever took this picture was standing</b></p> <p>13 <b>in.</b></p> <p>14 Q. How many feet away were you approximately?</p> <p>15 A. <b>I'm not sure. I couldn't estimate that.</b></p> <p>16 Q. Was it 2 feet, 3 feet, 6 feet, 10, 20?</p> <p>17 A. <b>Several feet.</b></p> <p>18 Q. Which would mean?</p> <p>19 A. <b>Several feet. Approximately 10 feet away at this</b></p> <p>20 <b>point.</b></p> <p>21 Q. Okay. When you were listening to the audio, did you</p> <p>22 hear Mr. Kapuscinski saying he's going to kill someone?</p> <p>23 A. <b>In the audio you can hear him yelling. However, it's</b></p> <p>24 <b>difficult to hear with the juvenile female screaming</b></p> <p>25 <b>and crying.</b></p>



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<p style="text-align: right;">Page 77</p> <p>1 Q. Sure. And I've listened to it a few times, and I'm not 2 trying to say I'm an expert on the audio, but I never 3 heard Mr. Kapuscinski saying anything about kill or 4 killing. I'm just curious if you heard it at all in 5 the audio when you listened to it.</p> <p>6 <b>A. I hear him yelling, but you can't make out what he's 7 saying.</b></p> <p>8 Q. You never hear the words kill or killing, at least in 9 the audio, correct?</p> <p>10 <b>A. In the audio, no.</b></p> <p>11 MR. WEGLARZ: We can stop for a minute, 12 that's fine.</p> <p>13 MS. FORBUSH: Thank you. 14 (At 10:50 a.m., recess taken) 15 (At 11:02 a.m., back on the record)</p> <p>16 BY MR. WEGLARZ:</p> <p>17 Q. When you go into this back bedroom, where is the little 18 girl? Because you hear her screaming in the audio at 19 this time, right?</p> <p>20 <b>A. Yes. I believe she's behind us.</b></p> <p>21 Q. Okay. And she's viewing what's going on, correct?</p> <p>22 <b>A. I believe so.</b></p> <p>23 Q. And when you get into that room and you have this 24 initial observation that you just describe for us over 25 the last 10, 15 minutes, I take it you were concerned</p>	<p style="text-align: right;">Page 79</p> <p>1 get more panicked when the Tasers were drawn?</p> <p>2 MS. McGIFFERT: Same objection. Go ahead.</p> <p>3 <b>THE WITNESS: I'm not sure. I don't know 4 what she was screaming at specifically.</b></p> <p>5 BY MR. WEGLARZ:</p> <p>6 Q. Okay. And from what I can hear on the audio, it sounds 7 like the first tase was done fairly quickly after you 8 guys got in that back bedroom, do you agree?</p> <p>9 <b>A. No. It was done after Officer Robinson gave him plenty 10 of time to comply with his orders to get off of her.</b></p> <p>11 Q. And how many such warnings do you think were given 12 before that first tase?</p> <p>13 <b>A. Several.</b></p> <p>14 Q. Three, seven, a dozen?</p> <p>15 <b>A. About seven.</b></p> <p>16 Q. And what were those warnings?</p> <p>17 <b>A. Officer Robinson said, "Stop, get off of her," 18 repeatedly.</b></p> <p>19 Q. And while he's saying that, the Taser's drawn.</p> <p>20 <b>A. I believe so.</b></p> <p>21 Q. And it's aimed where?</p> <p>22 <b>A. It would be aimed in the direction of where 23 Mr. Kapuscinski's at. I couldn't speak for Officer 24 Robinson's Taser where he was aimed, but I believe mine 25 was aimed towards the -- what you would consider the</b></p>
<p style="text-align: right;">Page 78</p> <p>1 about the female on the bed, right? That's what you 2 were telling me.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. You did not feel physically threatened at that point, 5 correct?</p> <p>6 <b>A. I felt she was in danger at that point, though not 7 myself and Officer Robinson at that point.</b></p> <p>8 Q. All right. Is that the point where you take out the 9 Taser?</p> <p>10 <b>A. At one point we did deploy our Tasers or take our 11 Tasers -- draw our Tasers I should say.</b></p> <p>12 Q. And do you both kind of draw the Tasers at the same 13 time, or does someone go first?</p> <p>14 <b>A. I couldn't recall who drew Tasers at what time or what 15 the timing was on that.</b></p> <p>16 Q. And when the Tasers were drawn, did the child seem to 17 react to that? Did she start screaming?</p> <p>18 MS. McGIFFERT: Place on objection as to 19 foundation and speculation. I mean, you can talk about 20 what you saw, but not what she felt.</p> <p>21 <b>THE WITNESS: The female was screaming -- the 22 juvenile female was screaming the whole time that we 23 were in there.</b></p> <p>24 BY MR. WEGLARZ:</p> <p>25 Q. Did the screaming seem to get louder or did she seem to</p>	<p style="text-align: right;">Page 80</p> <p>1 <b>preferred target areas of Mr. Kapuscinski.</b></p> <p>2 Q. And where specifically did you have your Taser aimed?</p> <p>3 <b>A. I couldn't tell you where specifically.</b></p> <p>4 Q. You can't tell me if it was the back or the legs or the 5 abdomen?</p> <p>6 <b>A. I couldn't tell you exactly specifically where it was 7 at. I don't exactly recall the positioning that he was 8 in at the time.</b></p> <p>9 (At 11:06 a.m., Chief Lawyer enters the room)</p> <p>10 MR. WEGLARZ: Hey, someone tried calling you 11 a sergeant and I said, "No, it's chief." I made sure.</p> <p>12 CHIEF LAWYER: Forget about it.</p> <p>13 MR. WEGLARZ: Thanks.</p> <p>14 (At 11:06 a.m., Chief Lawyer leaves the room)</p> <p>15 BY MR. WEGLARZ:</p> <p>16 Q. Sorry about that. We were interrupted. Is this the 17 usual routine or practice if you have two officers 18 going into a room like this, do you both draw the 19 Tasers, or is it supposed to be one? How does that 20 work?</p> <p>21 <b>A. You can both draw them, yeah.</b></p> <p>22 Q. Okay. And we know at some point a Taser is deployed, 23 correct?</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. And whose Taser deployed first?</p>

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<p style="text-align: right;">Page 81</p> <p>1 <b>A. Officer Robinson's.</b></p> <p>2 Q. How far away was Officer Robinson from the male and the</p> <p>3 female at the time he deployed the Taser?</p> <p>4 <b>A. I was paying attention to the male and female on the</b></p> <p>5 <b>bed. I don't know where Officer Robinson was standing</b></p> <p>6 <b>in the room in relation to them.</b></p> <p>7 Q. Do you have any idea as to where he was?</p> <p>8 <b>A. I do not.</b></p> <p>9 Q. Did he seem to be pretty much right next to you?</p> <p>10 <b>A. Probably he was kind of in front of me I believe on</b></p> <p>11 <b>the -- towards my right I believe.</b></p> <p>12 Q. And you're behind him to his left.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. Can you point to me where on Exhibit Number 2</p> <p>15 you would have been at the time that Robinson deployed</p> <p>16 the Taser?</p> <p>17 <b>A. I cannot. It's not pictured because it was right where</b></p> <p>18 <b>this guy's taking the picture.</b></p> <p>19 Q. And can you tell me where on there Officer Robinson was</p> <p>20 when he deployed the Taser?</p> <p>21 <b>A. I couldn't speculate to exactly where he was at. I'm</b></p> <p>22 <b>not sure where he was.</b></p> <p>23 Q. Can you tell me on what side of the bed he was</p> <p>24 standing?</p> <p>25 <b>A. I believe it would be -- I believe towards the right</b></p>	<p style="text-align: right;">Page 83</p> <p>1 <b>A. It's a sparking noise.</b></p> <p>2 Q. Do you hear like a loud click as well?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And when you're listening to your police car video,</p> <p>5 slash, audio, can you hear it on the audio?</p> <p>6 <b>A. I believe so, yes.</b></p> <p>7 Q. It's the first loud click that we hear in the audio,</p> <p>8 correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. And I believe the Michigan State Police, they even</p> <p>11 point out where in the video that the first tase is</p> <p>12 heard. Do you remember seeing that in their records or</p> <p>13 reports?</p> <p>14 <b>A. I would have to refer to the report here.</b></p> <p>15 Q. I may have it.</p> <p>16 <b>A. Yes, on page 33.</b></p> <p>17 Q. And it says 3 minutes, 55 seconds into the audio a</p> <p>18 Taser deployment can be heard, correct?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And that's what you recall hearing as well on the audio</p> <p>21 when you were listening to it, correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And that Taser deployment is from Officer Robinson,</p> <p>24 correct?</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">Page 82</p> <p>1 <b>side of the bed I believe.</b></p> <p>2 Q. Okay. The right side as we're looking at it straight</p> <p>3 at this picture, correct?</p> <p>4 <b>A. Correct. Not -- I don't mean on the very exact right</b></p> <p>5 <b>side, but in relation to the bed where he was at in</b></p> <p>6 <b>this picture to the right. I don't mean further up by</b></p> <p>7 <b>the bed.</b></p> <p>8 Q. Do you believe that he was positioned somewhere outside</p> <p>9 of the view of this picture here that we see as Exhibit</p> <p>10 2?</p> <p>11 <b>A. It's possible.</b></p> <p>12 Q. Do you think most likely that's where he was, outside</p> <p>13 of that viewing area?</p> <p>14 <b>A. It's possible. This picture doesn't depict the entire</b></p> <p>15 <b>room.</b></p> <p>16 Q. Right.</p> <p>17 <b>A. It's not a very informative picture for that. I would</b></p> <p>18 <b>need more on an aerial picture to see where the doors</b></p> <p>19 <b>are at. I don't recall where he was at looking at this</b></p> <p>20 <b>picture.</b></p> <p>21 Q. Just give me a second. Maybe there's a better one. I</p> <p>22 don't know if there is, though. When Officer Robinson</p> <p>23 deploys his Taser, it makes an audible sound I take it?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. What does it sound like?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. And what are you doing at that point?</p> <p>2 <b>A. At that point I am still standing kind of behind</b></p> <p>3 <b>Officer Robinson to cover him.</b></p> <p>4 Q. Okay. Why didn't you -- why didn't you deploy your</p> <p>5 Taser?</p> <p>6 <b>A. Officer Robinson deployed his Taser the first time.</b></p> <p>7 Q. Why didn't you deploy your Taser before Officer</p> <p>8 Robinson did?</p> <p>9 <b>A. Officer Robinson had a better vantage point. I mean,</b></p> <p>10 <b>he was in front of me.</b></p> <p>11 Q. Okay. Would you have deployed your Taser if you felt</p> <p>12 it was necessary?</p> <p>13 <b>A. If Officer Robinson did not deploy his Taser, then yes.</b></p> <p>14 Q. And Officer Robinson's Taser is a little bit different</p> <p>15 than your Taser, correct? Different model?</p> <p>16 <b>A. At this time, yes.</b></p> <p>17 Q. Did he have the X26?</p> <p>18 <b>A. I believe so, yes.</b></p> <p>19 Q. It's a yellow body?</p> <p>20 <b>A. I couldn't speculate to the color of it. I don't know</b></p> <p>21 <b>what color his Taser was.</b></p> <p>22 Q. It just has one cartridge?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And did that deploy two darts?</p> <p>25 <b>A. Yes.</b></p>



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<p style="text-align: right;">Page 85</p> <p>1 Q. And what happened to those two darts after they were 2 deployed by Officer Robinson?</p> <p>3 A. One of the darts went into Mr. Kapuscinski, and I do 4 not know where the other one went.</p> <p>5 Q. When you say the one dart hit Mr. Kapuscinski, where 6 specifically?</p> <p>7 A. I would have to refer to the reports.</p> <p>8 Q. Do you recall in general?</p> <p>9 A. I believe it was in an arm. I'd have to refer to the 10 reports.</p> <p>11 Q. Do you believe it was the right arm?</p> <p>12 A. That's possible, yes.</p> <p>13 Q. Okay. And where about on the arm?</p> <p>14 A. I believe possibly in the back of the arm.</p> <p>15 Q. Like the -- just above the elbow area?</p> <p>16 A. That would be possible, yeah.</p> <p>17 Q. And did that probe -- that dart, did it stick there?</p> <p>18 A. I believe so, yes.</p> <p>19 Q. Did the other probe or dart hit Mr. Kapuscinski at all?</p> <p>20 A. I do not know if it did or not.</p> <p>21 Q. Did you see that other dart or probe hit 22 Mr. Kapuscinski anywhere?</p> <p>23 A. I don't recall seeing it hit him at all.</p> <p>24 Q. Where do you recall seeing that other dart or probe go?</p> <p>25 A. I never found it. I never saw it. I don't know where</p>	<p style="text-align: right;">Page 87</p> <p>1 separated.</p> <p>2 Q. Did it seem like Mr. Kapuscinski was shocked from that 3 first Taser deployment?</p> <p>4 A. I don't know if he was or not.</p> <p>5 Q. You've seen what happens to people when they are 6 shocked by a Taser deployment, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Have you been tased, by the way? Do they make you do 9 that through the training?</p> <p>10 A. Yes, I have been.</p> <p>11 Q. What does that feel like, by the way?</p> <p>12 A. It's a very -- kind of almost hard to explain. You 13 lock up completely. Can't move. It does hurt.</p> <p>14 Q. I mean, is it like a pinch? I've never been tased. 15 Maybe you guys can show me after, but --</p> <p>16 MS. FORBUSH: Happy to.</p> <p>17 MS. MCGIFFERT: My pleasure.</p> <p>18 MR. WEGLARZ: Here I thought I'd get some 19 resistance.</p> <p>20 MS. FORBUSH: You want video?</p> <p>21 MR. WEGLARZ: Apparently not.</p> <p>22 BY MR. WEGLARZ:</p> <p>23 Q. I mean, is it a God awful pain?</p> <p>24 A. It feels like a big muscle spasm.</p> <p>25 MS. FORBUSH: The cramp of all cramps.</p>
<p style="text-align: right;">Page 86</p> <p>1 the second one went.</p> <p>2 Q. Did it hit the female?</p> <p>3 A. It's possible that it did. At the time I thought it 4 did. However, reviewing any reports, there's no record 5 of anyone removing the Taser probe from her, her 6 complaining of being hit by a Taser, her complaining of 7 being shocked by a Taser, her needing assistance for a 8 Taser, no evidence ever of a Taser wound being on her, 9 and I don't believe the probe was recovered at the 10 time.</p> <p>11 Q. How about was it ever recovered?</p> <p>12 A. I'm not sure if it was or not.</p> <p>13 Q. Did the Taser -- I mean, did it work? Did it affect 14 Mr. Kapuscinski at all?</p> <p>15 A. I don't know if it affected him in the way a Taser 16 normally would affect him as being as what you would 17 call shocked, but it affected him by separating him 18 from the female.</p> <p>19 Q. And how would it work like that other than by shocking 20 him?</p> <p>21 A. I couldn't speculate as to how it would affect him. It 22 could be maybe he thought he was going to get shocked, 23 maybe he just felt it hit him so he separated, maybe it 24 did shock him and they were separated. I don't know 25 exactly how it got them separated, but it got them</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. WEGLARZ: Like you're giving birth.</p> <p>2 MS. FORBUSH: Yeah.</p> <p>3 MR. WEGLARZ: Throughout your whole body.</p> <p>4 MS. FORBUSH: I doubt it.</p> <p>5 BY MR. WEGLARZ:</p> <p>6 Q. And how long does it last?</p> <p>7 A. Four or five seconds.</p> <p>8 Q. And it does incapacitate the person.</p> <p>9 A. For the five seconds.</p> <p>10 Q. And so if someone is being shocked by a Taser, it's 11 pretty easy to see that, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Did you see that type of a response with 14 Mr. Kapuscinski after that first deployment?</p> <p>15 A. I don't recall the Taser shocking him. However, 16 different people have different responses to it.</p> <p>17 Q. And you don't ever recall the other probe hitting the 18 female?</p> <p>19 A. I don't recall where it went. I don't know where it 20 went I should say.</p> <p>21 Q. But do you recall it making contact with the female? I 22 understand you may not know where it eventually went --</p> <p>23 A. I don't know if it made contact with the female. At 24 the time I had thought because there was only one probe 25 in him that the other one went into the female.</p>

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<p style="text-align: right;">Page 89</p> <p>1        However, she never needed a probe removed from her,  2        never had any aid or requested aid for a Taser injury,  3        never said that she was under power of a Taser or  4        shocked or anything of that nature.  5        Q. Did you ever tell anyone that the other probe went into  6        the female?  7        A. Yes.  8        Q. And who did you tell that to?  9        A. I said that to Officer Robinson at the time I believe  10       that it went into her just because it wasn't in him. I  11       didn't know where it was.  12       Q. Did you tell anyone else that?  13       A. If I can refer to the state police report. I possibly  14       told the state police that that's where it went.  15       Q. Did you listen to your audio interview with the state  16       police?  17       A. I did not. The state police report does not indicate  18       that I said it went into the female. It just said that  19       it separated them and one of the probes was in his  20       right arm.  21       Q. And you're correct, I recall that the written report  22       says that. In your audio, your recorded interview with  23       the state police, you told Sergeant Rhody that the  24       other probe went into her?  25       A. I don't recall that. I have not listened to that</p>	<p style="text-align: right;">Page 91</p> <p>1       female?  2       A. I don't know if it's a true statement. It's possible.  3       I don't know where the other probe went.  4       Q. And if you were to represent that it completed the  5       circuit, would that be a true statement?  6       A. If that probe had gone into her, it could compete the  7       circuit, but I don't know if that probe went into her.  8       Q. So you may have provided a misrepresentation then to  9       Sergeant Rhody?  10       MS. FORBUSH: Object to the form and  11       foundation.  12       MS. MCGIFFERT: Join.  13       THE WITNESS: No, I did not because at the  14       time I didn't know where that probe went. I believed  15       that it possibly went into her.  16       BY MR. WEGLARZ:  17       Q. Do you recall Officer Robinson ever mentioning to you  18       that one prong went into Mr. Kapuscinski and the other  19       went into the female?  20       A. No.  21       Q. But you do remember telling him that at the scene  22       shortly after the incident while in that back bedroom?  23       A. At the scene I did say that. At the time I believed  24       that that's possibly where it went.  25       Q. Okay. And you hear yourself saying it on this audio.</p>
<p style="text-align: right;">Page 90</p> <p>1       interview.  2       Q. Sure. And they were touching, so it completed the  3       circuit. Does that refresh your memory that you did  4       say that to Sergeant Rhody?  5       A. I don't recall saying that. If I did, I don't know  6       that I did. I would have to listen to the interview.  7       Q. Okay. Is that true what you told Sergeant Rhody?  8       A. Is what true?  9       Q. If you were to represent that the other probe went into  10       her and that they were touching, Mr. Kapuscinski and  11       the female, so it completed the circuit, is that true?  12       A. You're saying if one probe went into her, one probe  13       went into him, they would both feel the effects? Is  14       that what you're saying?  15       Q. Well, I'll take an answer to that I guess.  16       A. If one probe went into her and him, then yes, it would  17       affect them both, which would separate them.  18       Q. Now, if you represented to Sergeant Rhody that the  19       other probe actually went into the female, is that a  20       true statement?  21       A. If I told him that? I don't recall if I told him that  22       or not. I might have. At the time of this incident I  23       believed that that's where the probe possibly went.  24       Q. Okay. Do you believe that to be a true statement, the  25       other probe from Robinson's Taser went into her, the</p>	<p style="text-align: right;">Page 92</p> <p>1       A. Yes.  2       Q. From your scout car.  3       A. Yes.  4       Q. And at the time that you made this comment to Mr. -- or  5       to Officer Robinson, you felt that's what happened,  6       correct, that the probe hit her. That's why you said  7       it to him.  8       A. At that time, yes.  9       Q. How come -- now, you don't mention that in your  10       complaint report or record with the Rockwood PD, do  11       you?  12       A. I don't believe I do. I'd have to check that.  13       Q. You can take my word for it, but I didn't see it in  14       there. In fact, when I first heard it being mentioned  15       was actually in the audio interview with the state  16       police.  17       A. I say that the second probe missed.  18       Q. Right. Would there be any reason as to why you would  19       put that in your report that the other probe hit the  20       female?  21       A. I'm not sure where it went. It was just my belief at  22       the time that it was -- that it had hit the female. It  23       was just an opinion that wasn't a fact at the time. I  24       don't know where that second probe went.  25       Q. And Officer Robinson also represented to the state</p>

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<p style="text-align: right;">Page 93</p> <p>1 police, like I told you, that the other probe hit the</p> <p>2 female. Any reason why neither one of you mentioned</p> <p>3 that in your official reports?</p> <p>4 <b>A. I could not speak to what Officer Robinson talked to</b></p> <p>5 <b>with the state police about.</b></p> <p>6 Q. After that first Taser deployment, regardless of where</p> <p>7 that second probe or dart went, I believe you already</p> <p>8 told us that it was effective in at least separating</p> <p>9 Mr. Kapuscinski and the female?</p> <p>10 MS. MCGIFFERT: I'm just going to place an</p> <p>11 objection. Mischaracterizes his testimony. But you</p> <p>12 can answer the question.</p> <p>13 MR. WEGLARZ: Well, it may and it may not,</p> <p>14 that's why I'm asking.</p> <p>15 MS. MCGIFFERT: Well, you said that's what</p> <p>16 his testimony was, and I'm objecting to that. So if</p> <p>17 you're asking the question again, you can ask him the</p> <p>18 question as opposed to mischaracterizing his testimony.</p> <p>19 BY MR. WEGLARZ:</p> <p>20 Q. You can still answer.</p> <p>21 MS. MCGIFFERT: Do you know what the question</p> <p>22 is?</p> <p>23 <b>THE WITNESS: Can you --</b></p> <p>24 MS. FORBUSH: I don't.</p> <p>25 MS. MCGIFFERT: She can read it back to you</p>	<p style="text-align: right;">Page 95</p> <p>1 <b>A. Prior to the tasing, she was at risk of harm. After</b></p> <p>2 <b>the tasing, she no longer was. Officer Robinson and</b></p> <p>3 <b>myself were.</b></p> <p>4 Q. Well, we'll get to that. I want to take it in</p> <p>5 segments. After that first tase, they're separated,</p> <p>6 female is out of the room. There's no second tase yet,</p> <p>7 you agree?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. And once that female's out of the room, we no longer</p> <p>10 have the situation where she's now being threatened by</p> <p>11 Mr. Kapuscinski. That threat is gone at that moment,</p> <p>12 correct?</p> <p>13 <b>A. Her life is no longer being threatened.</b></p> <p>14 Q. And once she gets out of the room, is there a second</p> <p>15 tase that is activated on Mr. Kapuscinski? At that</p> <p>16 moment, the moment she leaves the room, was the second</p> <p>17 tase activated?</p> <p>18 <b>A. I don't know the timing of -- I don't recall the timing</b></p> <p>19 <b>of when she left the room versus when the second Taser</b></p> <p>20 <b>was -- or the second tasing attempt was.</b></p> <p>21 Q. Now, after that dart or probe hit Mr. Kapuscinski, how</p> <p>22 long did it take for him to fall off the bed?</p> <p>23 <b>A. I don't recall the exact --</b></p> <p>24 Q. I mean, it seemed to be instantaneous, correct?</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">Page 94</p> <p>1 with my objection noted.</p> <p>2 BY MR. WEGLARZ:</p> <p>3 Q. I'll just reask the question. After the first Taser</p> <p>4 deployment by Officer Robinson, did that have any</p> <p>5 effect on the situation?</p> <p>6 <b>A. It separated the two individuals on the bed.</b></p> <p>7 Q. Okay. And explain, please.</p> <p>8 <b>A. It separated them. He -- after that, he was no longer</b></p> <p>9 <b>choking her.</b></p> <p>10 Q. Okay. But they're still in the same positions, he just</p> <p>11 stopped choking her?</p> <p>12 <b>A. I believe he rolled or somehow got off the bed onto the</b></p> <p>13 <b>ground.</b></p> <p>14 Q. He fell on the ground, correct?</p> <p>15 <b>A. Okay. Yep.</b></p> <p>16 Q. That's what you recall, right?</p> <p>17 <b>A. Yes, he went onto the ground from there.</b></p> <p>18 Q. And he was on his back on the ground?</p> <p>19 <b>A. I don't recall exactly what position he was in. I</b></p> <p>20 <b>think he was more flailing, moving around.</b></p> <p>21 Q. And where does the female go?</p> <p>22 <b>A. She, I believe, ran out of the room.</b></p> <p>23 Q. And at this point in time you would agree after this</p> <p>24 first tase by Officer Robinson, the female is no longer</p> <p>25 at risk of being harmed by Mr. Kapuscinski.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. And when he falls off the bed, they're separated,</p> <p>2 right?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. They don't fall off the bed together, right?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Did you deploy -- well, you eventually deploy your</p> <p>7 Taser, correct? And we're going to talk about that in</p> <p>8 a second.</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Did you deploy your Taser before the female left the</p> <p>11 room?</p> <p>12 <b>A. I don't recall what the timing was when she left versus</b></p> <p>13 <b>when I deployed my Taser.</b></p> <p>14 Q. When you did deploy your Taser, do you recall the</p> <p>15 female being in the room?</p> <p>16 <b>A. I don't recall her being in the room.</b></p> <p>17 Q. Now, when Officer Robinson deploys his Taser, do you</p> <p>18 know how many times he actually fired the Taser? I</p> <p>19 know the darts and the probes are deployed, and so that</p> <p>20 will generate one five-second cycle, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Were there other cycles that were hit or activated?</p> <p>23 MS. FORBUSH: Well, I'm going to object to</p> <p>24 the form of the question. And you're referring to</p> <p>25 cycles, and cycles would imply that we have two probes</p>

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<p style="text-align: right;">Page 97</p> <p>1 and a completed cycle, and he's already indicated</p> <p>2 there's one probe. So when you use the word cycle, I</p> <p>3 think that's improper. Trigger pulls might be</p> <p>4 something different.</p> <p>5 MR. WEGLARZ: I can understand that, but I</p> <p>6 also think it's improper to have an objection like that</p> <p>7 and then really just tell the witness how he responds</p> <p>8 to the question so now I can't get a fair response, so</p> <p>9 --</p> <p>10 MS. FORBUSH: That's a very misleading</p> <p>11 question when you say cycle.</p> <p>12 MR. WEGLARZ: Well, he probably knows more</p> <p>13 about Tasers than all the lawyers here combined, so</p> <p>14 he's going to be the first one to tell me.</p> <p>15 MS. FORBUSH: Okay.</p> <p>16 BY MR. WEGLARZ:</p> <p>17 Q. Okay. Well, try to answer the question now, now that</p> <p>18 you've been -- now that you got a sneak preview of the</p> <p>19 response.</p> <p>20 <b>A. Can you repeat the question?</b></p> <p>21 Q. Sure.</p> <p>22 MR. WEGLARZ: Can you repeat it?</p> <p>23 (At 11:29 a.m., the court reporter read back:</p> <p>24 "Question: Were there other cycles that were</p> <p>25 hit or activated?")</p>	<p style="text-align: right;">Page 99</p> <p>1 <b>you're being tased or deploying a Taser. It only makes</b></p> <p>2 <b>one noise.</b></p> <p>3 Q. Did you deploy your Taser yet when you hear the second</p> <p>4 deployment or the second firing by Officer Robinson?</p> <p>5 <b>A. No.</b></p> <p>6 Q. And tell me what you observed after Robinson's second</p> <p>7 firing.</p> <p>8 <b>A. Officer Robinson's second attempt was unsuccessful.</b></p> <p>9 <b>Mr. Kapuscinski was still kicking, being very</b></p> <p>10 <b>aggressive towards us, not listening to verbal</b></p> <p>11 <b>commands. He was attempting to get up to come after</b></p> <p>12 <b>us. I then feared further assault on Officer Robinson</b></p> <p>13 <b>and myself from Mr. Kapuscinski. I then deployed my</b></p> <p>14 <b>Taser.</b></p> <p>15 Q. Okay. And, again, the deployment by Robinson happens</p> <p>16 when the female's already out of the room?</p> <p>17 <b>A. I don't know where she was at at the time.</b></p> <p>18 Q. The second deployment by Robinson, you would agree</p> <p>19 Mr. Kapuscinski is no longer a threat to the female at</p> <p>20 least, correct?</p> <p>21 MS. FORBUSH: Object to the form.</p> <p>22 MS. MCGIFFERT: The question's been asked and</p> <p>23 answered.</p> <p>24 BY MR. WEGLARZ:</p> <p>25 Q. Go ahead.</p>
<p style="text-align: right;">Page 98</p> <p>1 <b>THE WITNESS: There was a second attempt at</b></p> <p>2 <b>tasing Mr. Kapuscinski.</b></p> <p>3 BY MR. WEGLARZ:</p> <p>4 Q. And how do you know that? Second attempt by Officer</p> <p>5 Robinson, correct?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. Okay. And how do you know that?</p> <p>8 <b>A. I was able to hear the Taser being deployed.</b></p> <p>9 Q. And that's -- is that the same sound that we hear</p> <p>10 initially, that loud click?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Okay. All right. So even though the cartridge has</p> <p>13 already been fired, to fire it again, is that when we</p> <p>14 do the ARC circuit thing? I'm sorry, I'm thinking</p> <p>15 about my DTE case. Is that when you do the ARC button?</p> <p>16 <b>A. No, not on that Taser.</b></p> <p>17 Q. Okay. To fire it again, you just pull the trigger on</p> <p>18 that model.</p> <p>19 MS. FORBUSH: Object to the form.</p> <p>20 <b>THE WITNESS: Correct.</b></p> <p>21 BY MR. WEGLARZ:</p> <p>22 Q. And that makes the same click that you hear when the</p> <p>23 cartridge is deployed?</p> <p>24 <b>A. It will be the same -- yeah, it's the same Taser, the</b></p> <p>25 <b>same noise. It wouldn't be a different noise when</b></p>	<p style="text-align: right;">Page 100</p> <p>1 <b>A. He's a threat to myself and Officer Robinson.</b></p> <p>2 Q. All right. But not the female at that point.</p> <p>3 <b>A. At that point not the female anymore.</b></p> <p>4 Q. Okay. And Mr. Robinson is still on the ground?</p> <p>5 MS. FORBUSH: Mr. Kapuscinski?</p> <p>6 BY MR. WEGLARZ:</p> <p>7 Q. Yeah, sorry.</p> <p>8 <b>A. At which point?</b></p> <p>9 Q. So I'll object to my own question. When the second</p> <p>10 Taser is deployed --</p> <p>11 MS. FORBUSH: Object to form.</p> <p>12 BY MR. WEGLARZ:</p> <p>13 Q. -- by Robinson, the second firing.</p> <p>14 <b>A. He is on the ground, he's kicking at us, and attempting</b></p> <p>15 <b>to get up.</b></p> <p>16 Q. When he's on the ground kicking at you, how is he</p> <p>17 positioned on the ground?</p> <p>18 <b>A. I'm not sure exactly how he was. He was, I believe,</b></p> <p>19 <b>coming from his back, kicking, getting onto his knees</b></p> <p>20 <b>in an attempt to get up.</b></p> <p>21 Q. So he's initially on his back?</p> <p>22 <b>A. I believe so. At one point he was on his back I</b></p> <p>23 <b>believe.</b></p> <p>24 Q. All right. Well, when he first fell to the ground,</p> <p>25 wasn't he on his back?</p>

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<p>1 <b>A. Most likely would be on his back, yes.</b></p> <p>2 Q. All right. And then does that position change at any</p> <p>3 point in time up until the time that Robinson does the</p> <p>4 second firing?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. And tell me what changes about the position of</p> <p>7 Kapuscinski being on the back on the floor?</p> <p>8 <b>A. He's kicking at us. Officer Robinson is ordering him</b></p> <p>9 <b>to roll over so he can place him in handcuffs. He's</b></p> <p>10 <b>not obeying Officer Robinson's orders while kicking at</b></p> <p>11 <b>us and then attempts to get up.</b></p> <p>12 Q. So Officer Robinson is trying to tell Kapuscinski to</p> <p>13 roll over?</p> <p>14 <b>A. Yes, on his stomach.</b></p> <p>15 Q. He wants him to go on his stomach. He wants</p> <p>16 Kapuscinski to go on his stomach, and then what's</p> <p>17 significant about him going on his stomach?</p> <p>18 <b>A. He can be placed in handcuffs.</b></p> <p>19 Q. Okay. So I take it when he's yelling "roll over," he's</p> <p>20 still on his back.</p> <p>21 <b>A. I believe so.</b></p> <p>22 Q. Okay. Is he kicking while he's lying on his back?</p> <p>23 <b>A. I believe so.</b></p> <p>24 Q. Describe that.</p> <p>25 <b>A. Just kicking. He's just attempting to assault Officer</b></p>	<p>1 kicking motion?</p> <p>2 <b>A. It would have been a brief period of time before he</b></p> <p>3 <b>attempted to get up.</b></p> <p>4 Q. And describe what he did at the point where it looked</p> <p>5 like he was trying to get up.</p> <p>6 <b>A. He had gotten onto his hands and knees, and he had --</b></p> <p>7 <b>was attempting to stand up from kind of like a kneeling</b></p> <p>8 <b>position.</b></p> <p>9 Q. All right. So he now goes from lying on his back, now</p> <p>10 we've got him on his hands and knees on the floor.</p> <p>11 <b>A. Yeah.</b></p> <p>12 Q. I take it while he's on his hands and knees, he's not</p> <p>13 throwing punches or kicking anyone?</p> <p>14 <b>A. I don't believe so at that point.</b></p> <p>15 Q. Okay. And how long does he remain on his hands and</p> <p>16 knees?</p> <p>17 <b>A. He got up immediately. He wasn't staying there. He</b></p> <p>18 <b>was getting to a standing position, attempting to get</b></p> <p>19 <b>to a standing position.</b></p> <p>20 Q. Okay. Because I thought you told me earlier you never</p> <p>21 did see him in a standing position.</p> <p>22 <b>A. I never saw him standing fully up, no.</b></p> <p>23 Q. All right. Did you see him standing partially up?</p> <p>24 <b>A. He was from getting from a kneeling position attempting</b></p> <p>25 <b>to get to a standing position.</b></p>
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<p>1 Robinson. He was resisting Officer Robinson's attempt</p> <p>2 to put him in handcuffs.</p> <p>3 Q. So we have a full naked man lying on the floor on his</p> <p>4 back trying to assault two officers by kicking in that</p> <p>5 position.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Did he ever strike you?</p> <p>8 <b>A. He did not strike me, no.</b></p> <p>9 Q. Did he ever strike Officer Robinson?</p> <p>10 <b>A. I'm not sure.</b></p> <p>11 Q. Did you ever see him strike Officer Robinson?</p> <p>12 <b>A. I don't recall if he hit him or not, no.</b></p> <p>13 Q. How many times did you observe -- was he kicking with</p> <p>14 both legs?</p> <p>15 <b>A. I don't recall.</b></p> <p>16 Q. Do you recall him kicking with one leg?</p> <p>17 <b>A. He would at least have to be kicking with one leg if he</b></p> <p>18 <b>was kicking at us. I don't recall if it was two legs</b></p> <p>19 <b>at once.</b></p> <p>20 Q. Can you tell me what leg that he kicked?</p> <p>21 <b>A. I don't recall.</b></p> <p>22 Q. Can you tell me how many times you observed any leg in</p> <p>23 a kicking motion by Mr. Kapuscinski?</p> <p>24 <b>A. I don't recall.</b></p> <p>25 Q. Can you tell me for how long of a period he was in this</p>	<p>1 Q. Okay. And tell me -- tell me what you observed about</p> <p>2 the change in his position to get to that point.</p> <p>3 <b>A. He was just attempting to stand up. I'm not sure what</b></p> <p>4 <b>you're --</b></p> <p>5 Q. Well, did he -- was he able to stand on just his --</p> <p>6 just his two feet at any time?</p> <p>7 <b>A. I don't know if he was on his -- he wasn't standing</b></p> <p>8 <b>straight up on two feet. He was getting from a</b></p> <p>9 <b>kneeling position to attempting to stand up.</b></p> <p>10 Q. All right. Did you ever see him take one knee off the</p> <p>11 ground?</p> <p>12 <b>A. I'm not sure if his knees were off the ground or what</b></p> <p>13 <b>exact position he was at.</b></p> <p>14 Q. Did you ever see him take one hand or elbow off the</p> <p>15 ground?</p> <p>16 <b>A. I would assume that he did. He was attempting to stand</b></p> <p>17 <b>up, yes.</b></p> <p>18 Q. Sure. And I assume that that has to be done too when</p> <p>19 you go from the hands and knees position to a standing</p> <p>20 position, but I'm interested in what you actually</p> <p>21 recall seeing.</p> <p>22 <b>A. He was attempting to get up from a kneeling position.</b></p> <p>23 <b>His hands would have been off the ground attempting to</b></p> <p>24 <b>stand up, but was not standing up.</b></p> <p>25 Q. Did he have both hands off the ground?</p>



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<p>1 A. I believe so.</p> <p>2 Q. So he had both hands off the ground, and did he have</p> <p>3 either knee still on the ground?</p> <p>4 A. I don't believe he had one knee on the ground, so I</p> <p>5 think he had possibly into a crouching position at this</p> <p>6 time. His knees were -- wouldn't have been on the</p> <p>7 ground. He was attempting to stand up.</p> <p>8 Q. So he would have had both knees off the ground, both</p> <p>9 feet on the ground, and he had both hands off the</p> <p>10 ground starting to stand up.</p> <p>11 A. In a crouching-type position I believe. He was not</p> <p>12 fully standing up.</p> <p>13 Q. And at what angle do you think he --</p> <p>14 A. I don't know.</p> <p>15 Q. What's the highest angle he got?</p> <p>16 A. I don't know what that angle would be. It would not be</p> <p>17 a full 90-degree angle. Forty-five at the most angle.</p> <p>18 He was not fully standing up.</p> <p>19 Q. When you talk about being crouched, you're talking</p> <p>20 about the torso being bent forward?</p> <p>21 A. Yes.</p> <p>22 Q. 45 degrees?</p> <p>23 A. Maybe 45 or less, yes.</p> <p>24 Q. Okay. Facing you?</p> <p>25 A. Yes.</p>	<p>1 Q. Do you ever recall him saying to get on the ground</p> <p>2 after he gave the instruction to turn over and roll</p> <p>3 over?</p> <p>4 A. I don't recall. He could have. I don't recall. I</p> <p>5 would refer to the audio.</p> <p>6 Q. Sure. So when do you tase Mr. Kapuscinski?</p> <p>7 A. As he's getting up, while he's not listening to</p> <p>8 commands, I then deploy my Taser.</p> <p>9 Q. And the commands that he wasn't listening to, that then</p> <p>10 after which we hear -- or we have you deploying your</p> <p>11 Taser, can you tell me those commands?</p> <p>12 A. Can you repeat that?</p> <p>13 Q. Sure. What were the commands that he wasn't listening</p> <p>14 to?</p> <p>15 A. Officer Robinson's commands of putting his hands behind</p> <p>16 his back and, originally, roll over. He wasn't rolling</p> <p>17 over, and then he was attempting to get up.</p> <p>18 Q. Then he was told to get on the ground?</p> <p>19 A. I would have to refer to the audio. I don't recall if</p> <p>20 he said get on the ground or not.</p> <p>21 Q. Well, I'm just interested in what you recall hearing.</p> <p>22 A. If that's what Officer Robinson had said, then that was</p> <p>23 the command that he was ignoring, to get on the ground.</p> <p>24 Q. Do you recall Officer Robinson also telling him to put</p> <p>25 his hands behind his back?</p>
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<p>1 Q. And I take it while he's doing that he's not kicking</p> <p>2 because he's using his legs to --</p> <p>3 A. At that point, no.</p> <p>4 Q. -- support his weight to try to stand up, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And what's going on with his hands?</p> <p>7 A. His hands were I think kind of on his knees. I don't</p> <p>8 know where they were at. They weren't on the ground,</p> <p>9 they weren't coming at us, but I believe he had them</p> <p>10 trying to stabilize himself.</p> <p>11 Q. So somewhere on his knees trying to stabilize himself?</p> <p>12 A. I believe so, yeah.</p> <p>13 Q. Okay. So is he being tased at this point?</p> <p>14 A. No.</p> <p>15 Q. What are you doing while he's in this position?</p> <p>16 A. I'm standing in front of him, and Officer Robinson is</p> <p>17 giving him verbal commands to stop and to get down, and</p> <p>18 he's not listening to him while he's getting up.</p> <p>19 Q. Because before he was telling him to turn over or roll</p> <p>20 over, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And then those commands changed to "get on the ground"</p> <p>23 because he's now partially standing up.</p> <p>24 A. I don't recall exactly what wording Officer Robinson</p> <p>25 was using at the time.</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And instead of putting his hands behind his</p> <p>3 back, what was Mr. Kapuscinski doing?</p> <p>4 A. He was attempting to stand up.</p> <p>5 Q. And when he didn't listen to those commands to put his</p> <p>6 hands behind his back, is that when you tased him?</p> <p>7 A. No. I tased him as he was getting up, apparently</p> <p>8 attempting to attack Officer Robinson and I.</p> <p>9 Q. Okay. All right. I need to cover that middle ground</p> <p>10 there. So we have him in a 45-degree angle in the</p> <p>11 process of trying to get up, and then some point after</p> <p>12 that, he then tries to attack you?</p> <p>13 A. It appeared that he was attempting to get up to come</p> <p>14 after Officer Robinson and I.</p> <p>15 Q. Okay. So tell me, what did he do to now be in this</p> <p>16 position that looks like he's attacking you and/or</p> <p>17 Officer Robinson?</p> <p>18 A. Are you asking how he got into that position, or are</p> <p>19 you asking what he was doing to -- I'm not sure what</p> <p>20 you're asking.</p> <p>21 Q. What about Mr. Kapuscinski led you to believe that he</p> <p>22 was trying to attack you and Mr. Robinson?</p> <p>23 A. How he was not listening to our commands and just the</p> <p>24 look on his face. He had a deranged look on his face</p> <p>25 that appeared that he was very aggressive and rage</p>

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<p>1 filled.</p> <p>2 Q. Okay. Anything else other than not listening to</p> <p>3 Robinson's commands and having a rage look on his face</p> <p>4 that he did for you to believe and feel that he was</p> <p>5 attacking either one of you?</p> <p>6 A. Getting up, coming towards us, attempting to get up to</p> <p>7 come towards us.</p> <p>8 Q. Let's break that down. You know he's unarmed, right?</p> <p>9 A. Correct.</p> <p>10 Q. He's bare naked still?</p> <p>11 A. Correct.</p> <p>12 Q. When you say attempting to get up and come toward us,</p> <p>13 we already talked about attempting to get up, correct?</p> <p>14 A. Correct.</p> <p>15 Q. He's getting on both feet, he's roughly at a 45-degree</p> <p>16 angle, he has both hands around his knee area trying to</p> <p>17 stabilize himself trying to come up, correct?</p> <p>18 A. I believe so, yeah.</p> <p>19 Q. And then you said "come towards us." I didn't hear</p> <p>20 anything about that earlier, so tell me, what did he do</p> <p>21 that you took as a gesture that he's coming toward you</p> <p>22 in a threatening fashion?</p> <p>23 A. By attempting to get up and not listening to Officer</p> <p>24 Robinson's commands, the look on his face, he would</p> <p>25 have no reason to get up when Officer Robinson is</p>	<p>1 A. He was getting up towards us, yes.</p> <p>2 Q. When you say getting up, we already talked about that.</p> <p>3 He's raising in that 45-degree position with his feet</p> <p>4 on the ground, correct?</p> <p>5 A. Which would include, while getting up from that</p> <p>6 kneeling position, taking a step towards you to move</p> <p>7 towards you.</p> <p>8 Q. Okay. When does he take a step towards you after that</p> <p>9 kneeling position?</p> <p>10 A. It was just in the -- while in the process of him</p> <p>11 getting up, his foot came down towards us.</p> <p>12 Q. How many steps does he take toward you?</p> <p>13 A. He didn't take any necessarily steps. It was just the</p> <p>14 step of getting up while he was coming towards us.</p> <p>15 Q. He just went from his knee to his feet to try to stand</p> <p>16 up.</p> <p>17 A. While he appeared to be coming towards us, yes.</p> <p>18 Q. Okay. But he didn't take any steps towards you.</p> <p>19 A. I'm not sure if -- I'm not sure.</p> <p>20 Q. He never took a swing at you?</p> <p>21 A. He never took a swing at me, no.</p> <p>22 Q. Never took a swing at Officer Robinson?</p> <p>23 A. Not that I recall.</p> <p>24 Q. And ever since he was on his hands and knees and even</p> <p>25 while trying to stand up, he never engaged in any more</p>
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<p>1 telling him to stay down unless it was to attack us.</p> <p>2 Q. So I think I understand. The way -- you interpreted</p> <p>3 this as a threatening gesture only because you thought</p> <p>4 he would have no other reason to try to stand up on his</p> <p>5 own two feet, correct?</p> <p>6 MS. FORBUSH: Object to the form.</p> <p>7 THE WITNESS: His look of rage and aggression</p> <p>8 on his face was a look that he was going to come attack</p> <p>9 us. He had no reason to stand up and ignore commands</p> <p>10 unless he was going to attack us, and he already showed</p> <p>11 that he was violent by attacking the female.</p> <p>12 BY MR. WEGLARZ:</p> <p>13 Q. When he was trying to stand up, he appeared to be</p> <p>14 struggling with that feat?</p> <p>15 A. I don't know if I would say he was struggling. He was</p> <p>16 doing a pretty good job at getting up.</p> <p>17 Q. He didn't seem to have difficulty doing that?</p> <p>18 A. Not that I recall.</p> <p>19 Q. He didn't seem to be under the effect or dazed by just</p> <p>20 what happened?</p> <p>21 A. I don't remember him being under the effect or daze of</p> <p>22 the Taser.</p> <p>23 Q. Okay. Did he ever lunge towards you?</p> <p>24 A. No, he did not lunge at us.</p> <p>25 Q. Did he ever take a step toward you?</p>	<p>1 kicking motions, agreed?</p> <p>2 A. After attempting to stand up, I don't believe he kicked</p> <p>3 at all, no.</p> <p>4 Q. And that's when you deployed your Taser.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Where did you aim?</p> <p>7 A. I was aiming, as I always do, in the preferred target</p> <p>8 areas of Mr. Kapuscinski.</p> <p>9 Q. Well, there's several of those, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. So where specifically on Mr. Kapuscinski's body</p> <p>12 were you aiming that Taser?</p> <p>13 A. I don't know where specifically.</p> <p>14 Q. Where were you hoping to hit him?</p> <p>15 A. In the preferred target areas.</p> <p>16 Q. Which was?</p> <p>17 A. The preferred target areas that we've already gone</p> <p>18 over, the arms, abdomen, legs, any of these areas.</p> <p>19 Q. Or back.</p> <p>20 A. Or back. But he was facing me, which would not have</p> <p>21 been feasible.</p> <p>22 Q. So we can agree you weren't aiming at the back.</p> <p>23 A. Correct.</p> <p>24 Q. And are you facing each other?</p> <p>25 A. Yes.</p>



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<p style="text-align: right;">Page 113</p> <p>1 Q. And what's the distance between the two of you?</p> <p>2 A. <b>Several feet.</b></p> <p>3 Q. Three feet, four feet?</p> <p>4 A. <b>Approximately maybe five to -- five, six, seven feet approximately.</b></p> <p>5</p> <p>6 Q. And is his torso still bent forward in roughly a</p> <p>7 45-degree angle when you deploy your Taser?</p> <p>8 A. <b>I believe so.</b></p> <p>9 Q. Did you give him any commands or warnings?</p> <p>10 A. <b>I did not I don't believe.</b></p> <p>11 Q. I didn't hear it in the audio, but you listened to the</p> <p>12 audio as well. You don't hear yourself giving any</p> <p>13 warnings or commands, correct?</p> <p>14 A. <b>Correct.</b></p> <p>15 Q. Were you aiming for the chest?</p> <p>16 A. <b>No.</b></p> <p>17 Q. Were you trying to avoid the chest?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. Why?</p> <p>20 A. <b>It's not a preferred target area.</b></p> <p>21 Q. But you could see his chest from the positions the two</p> <p>22 of you were, correct?</p> <p>23 A. <b>Correct.</b></p> <p>24 Q. And when you -- when you were deploying your Taser, is</p> <p>25 there -- what position were you in? Do you have your</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. -- level were you?</p> <p>2 A. <b>I couldn't recall. I don't know.</b></p> <p>3 Q. What degree of angle downward do you think you had that</p> <p>4 Taser pointed?</p> <p>5 A. <b>I don't know.</b></p> <p>6 Q. Best estimate.</p> <p>7 A. <b>I couldn't give you an estimate. I don't know.</b></p> <p>8 Q. Twenty-three degrees?</p> <p>9 MS. MCGIFFERT: I'm going to place on</p> <p>10 objection. The question's been asked and answered.</p> <p>11 He's told you, "I can't give you an estimate." Can't</p> <p>12 force it.</p> <p>13 BY MR. WEGLARZ:</p> <p>14 Q. Best estimate.</p> <p>15 MS. MCGIFFERT: If he can't give you an</p> <p>16 estimate, he can't give you a best estimate.</p> <p>17 MR. WEGLARZ: Sure he can.</p> <p>18 MS. MCGIFFERT: And I'm definitely cautioning</p> <p>19 the witness not to guess.</p> <p>20 <b>THE WITNESS: I don't know.</b></p> <p>21 BY MR. WEGLARZ:</p> <p>22 Q. Greater than 45 degrees or less than 45 degrees?</p> <p>23 A. <b>I don't know.</b></p> <p>24 Q. Was Mr. Kapuscinski looking at you at the time you</p> <p>25 deployed your Taser?</p>
<p style="text-align: right;">Page 114</p> <p>1 knees bent slightly? How do you do that?</p> <p>2 A. <b>Standing position.</b></p> <p>3 Q. I'm assuming it's standing. Perfectly straight, or are</p> <p>4 your knees bent?</p> <p>5 A. <b>I don't recall if my knees were bent or not.</b></p> <p>6 Q. How do you normally do it?</p> <p>7 A. <b>I guess there would be a slight bend in my knee.</b></p> <p>8 Q. Keep your arms extended completely out --</p> <p>9 A. <b>I wouldn't say --</b></p> <p>10 Q. -- parallel to the floor?</p> <p>11 A. <b>I wouldn't say completely out as you have it, but not</b></p> <p>12 <b>completely locked out, no.</b></p> <p>13 Q. You can tell I don't shoot these a lot, right?</p> <p>14 MS. FORBUSH: Ever.</p> <p>15 MR. WEGLARZ: Only a few times a week.</p> <p>16 BY MR. WEGLARZ:</p> <p>17 Q. Slightly bent. Are you aiming -- do you think you were</p> <p>18 parallel to the floor, were you aiming slightly</p> <p>19 downward, slightly upward?</p> <p>20 A. <b>I believe slightly downward. As he was coming from a</b></p> <p>21 <b>downward to an up position and I was up, I would have</b></p> <p>22 <b>had to have aimed downwards.</b></p> <p>23 Q. And how far below was that Taser? How far below your</p> <p>24 shoulder --</p> <p>25 A. <b>I couldn't --</b></p>	<p style="text-align: right;">Page 116</p> <p>1 A. <b>Yes.</b></p> <p>2 Q. Did he say anything?</p> <p>3 A. <b>I don't believe so, no.</b></p> <p>4 Q. Did your darts hit Mr. Kapuscinski?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. Where?</p> <p>7 A. <b>One hit him in the upper left chest, one hit him in the</b></p> <p>8 <b>lower right abdomen.</b></p> <p>9 Q. And whereabouts in the upper left chest?</p> <p>10 A. <b>Probably maybe a couple inches below the clavicle.</b></p> <p>11 Q. Did both darts -- do you believe the darts landed where</p> <p>12 you were aiming?</p> <p>13 A. <b>I don't -- I wasn't necessarily aiming for the chest,</b></p> <p>14 <b>so no. I was aiming for the preferred target zone.</b></p> <p>15 <b>With a moving target, it's almost impossible to -- or</b></p> <p>16 <b>not feasible to hit exactly where you're aiming in</b></p> <p>17 <b>those preferred target zones all the time. I was not</b></p> <p>18 <b>aiming for the chest.</b></p> <p>19 Q. But you were aiming for his torso, fair to say?</p> <p>20 A. <b>I was aiming for the preferred target zones.</b></p> <p>21 Q. Come on. Which were? Were you trying to hit the leg,</p> <p>22 were you trying to hit the abdomen, were you trying to</p> <p>23 hit the arm?</p> <p>24 A. <b>I was trying to hit a preferred target zone. It was</b></p> <p>25 <b>the arm, abdomen, legs.</b></p>

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<p style="text-align: right;">Page 117</p> <p>1 Q. But you can't aim at all of those at the same time, can you?</p> <p>2</p> <p>3 A. Not at the same time, no.</p> <p>4 Q. Okay. So which one were you really trying to hit?</p> <p>5 A. I would probably be trying to hit the abdomen, but with him moving, it's impossible to -- not feasible, I should say, to hit where you're aiming.</p> <p>6</p> <p>7 Q. And did he move from the moment you aimed and then decided to press the trigger?</p> <p>8</p> <p>9</p> <p>10 A. He was moving the entire time, yes.</p> <p>11 Q. Well, what movement did he engage in?</p> <p>12 A. He was standing up.</p> <p>13 Q. So his movement during this process was that his torso was going higher as he was trying to stand up, correct? He was raising the torso up.</p> <p>14</p> <p>15 A. I guess, yeah.</p> <p>16 Q. And the more he raised his torso, the higher up his chest became.</p> <p>17</p> <p>18 A. I guess so, yes.</p> <p>19 Q. Does that make sense?</p> <p>20 A. Yes, that makes sense.</p> <p>21 Q. Sure. And the more he's raising up, the easier it should be to hit the abdomen because now the chest is becoming further away, correct?</p> <p>22</p> <p>23 A. Not necessarily on a moving target.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 119</p> <p>1 Q. And what's that set angle?</p> <p>2 A. I don't know.</p> <p>3 Q. Do you have any idea?</p> <p>4 A. I would have to refer you to the Taser training, which I don't have on me. I don't know.</p> <p>5</p> <p>6 Q. But you go through it every year, correct?</p> <p>7 A. Correct.</p> <p>8 Q. So you aim somewhere, but you know when you shoot it, these wires and probes are going to spread --</p> <p>9</p> <p>10 A. Correct.</p> <p>11 Q. -- a certain distance, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And does one -- will one typically go higher than the other in addition to the two spreading apart?</p> <p>14</p> <p>15 A. One will stay on a level plane, while the bottom one will drop down I believe.</p> <p>16</p> <p>17 Q. Okay. And it's designed that way, correct, because you need them spread apart for it to be effective.</p> <p>18</p> <p>19 A. Correct.</p> <p>20 Q. So it's designed so that the bottom one goes lower than the top one.</p> <p>21</p> <p>22 A. I believe so, yes.</p> <p>23 Q. All right. And so when you're aiming, you're really aiming the top probe, correct?</p> <p>24</p> <p>25 A. I would guess so.</p>
<p style="text-align: right;">Page 118</p> <p>1 Q. Were you satisfied with where those darts landed?</p> <p>2 MS. FORBUSH: Object to form.</p> <p>3 MS. MCGIFFERT: Join.</p> <p>4 THE WITNESS: What did you mean by satisfied?</p> <p>5 Was I happy to tase him?</p> <p>6 BY MR. WEGLARZ:</p> <p>7 Q. Were you happy they landed there as opposed to any other location?</p> <p>8</p> <p>9 A. I wouldn't say I was happy. I was aiming for the preferred target areas. It wasn't always feasible at the time to necessarily hit that specific area with a moving target. I wouldn't say I was happy to have a dart in his chest, no.</p> <p>10</p> <p>11 Q. And, actually, the one dart went into a non-preferred area, correct?</p> <p>12</p> <p>13 A. Yes.</p> <p>14 Q. You can't aim both darts, can you?</p> <p>15</p> <p>16 A. It's very difficult to aim the Taser. Even while aiming, they're not going to always go right where you want them to.</p> <p>17</p> <p>18 Q. So how is it that when you're aiming at one location, one goes in the abdomen and one goes further up?</p> <p>19</p> <p>20 A. They spread out.</p> <p>21 Q. And do they spread out in a typical manner?</p> <p>22</p> <p>23 A. There's a set angle that they would spread out at.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Yeah. With the understanding that, all right, I'm aiming the top probe for this targeted area. I know the low probe typically goes a little bit lower, and that's going to hit somewhere beneath that, correct?</p> <p>2</p> <p>3 A. Okay.</p> <p>4 Q. Okay. So it sounds like where these -- so obviously the top probe here is the one that landed in the chest area, right?</p> <p>5</p> <p>6 A. I guess so, yes.</p> <p>7 Q. Okay. So the way I look at it is it looks like you were aiming for the chest, the top probe hit the chest where you were aiming, and then that lower probe went lower into the abdomen, correct?</p> <p>8</p> <p>9 A. No. I was not aiming for his chest.</p> <p>10 Q. Okay. Did it work?</p> <p>11</p> <p>12 A. Did the Taser work?</p> <p>13</p> <p>14 Q. Yeah.</p> <p>15 A. Yes.</p> <p>16 Q. Did it fire?</p> <p>17</p> <p>18 A. Yes.</p> <p>19 Q. Was he juiced?</p> <p>20</p> <p>21 MS. FORBUSH: Object to the form.</p> <p>22 BY MR. WEGLARZ:</p> <p>23 Q. It's an electrical term, forgive me.</p> <p>24</p> <p>25 A. Do you mean was he under the influence of the Taser?</p>

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Pages 121-124

<p style="text-align: right;">Page 121</p> <p>1 Q. Yeah, I like that better.</p> <p>2 A. Yes.</p> <p>3 Q. How so? What happened?</p> <p>4 A. He stopped doing the action that he was doing, went</p> <p>5 down to the floor where Officer Robinson was able to</p> <p>6 handcuff him.</p> <p>7 Q. And the action he was doing is he was trying to stand</p> <p>8 up.</p> <p>9 A. Yes.</p> <p>10 Q. And he fell to the floor?</p> <p>11 A. Yes, he went down onto the ground.</p> <p>12 Q. And when he went to the ground, he was in what</p> <p>13 position?</p> <p>14 A. Officer Robinson handcuffed him, so I believe he would</p> <p>15 have been on his stomach at that point.</p> <p>16 Q. Did you fire the Taser again?</p> <p>17 A. No, I did not.</p> <p>18 Q. It worked as it was intended to work, correct?</p> <p>19 A. Correct.</p> <p>20 Q. This didn't seem like a guy who was somehow -- I know</p> <p>21 you said, hey, you know what, whether Tasers are real</p> <p>22 painful or not, it depends on the person. Sometimes</p> <p>23 people don't feel anything, sometimes they have this</p> <p>24 super strength, whatever, it doesn't affect them,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. It took Mr. Kapuscinski down right away, agreed?</p> <p>2 A. Correct.</p> <p>3 Q. You didn't fire it again?</p> <p>4 A. No.</p> <p>5 Q. Did either you or Officer Robinson get any -- were you</p> <p>6 under any tase? Did you also get tased? I know</p> <p>7 sometimes officers are collateral damage in these</p> <p>8 things.</p> <p>9 A. No.</p> <p>10 Q. Was a drive stun ever used?</p> <p>11 A. No.</p> <p>12 Q. Was it ever attempted?</p> <p>13 A. No.</p> <p>14 Q. And what is that, by the way?</p> <p>15 A. What is a drive stun?</p> <p>16 Q. Yes.</p> <p>17 A. That would be when you have the Taser, instead of</p> <p>18 deploying the probes, you would hold it on the</p> <p>19 individual and activate it just holding it up to them.</p> <p>20 Q. And do you have to activate a certain button?</p> <p>21 A. On the X2 model that I use, you would have to use the</p> <p>22 ARC switch.</p> <p>23 Q. What about on the other model, the 26?</p> <p>24 A. On the X26 you would have to remove the cartridge and</p> <p>25 then hold it up to the person.</p>
<p style="text-align: right;">Page 122</p> <p>1 MS. MCGIFFERT: Well, I'm just going to place</p> <p>2 an objection as to foundation. Is that supposed to be</p> <p>3 what his testimony was?</p> <p>4 MR. WEGLARZ: Yes. I'm paraphrasing.</p> <p>5 MS. MCGIFFERT: Objection to --</p> <p>6 MR. WEGLARZ: If I'm incorrect, he'll tell</p> <p>7 me.</p> <p>8 MS. MCGIFFERT: -- mischaracterizing his</p> <p>9 testimony.</p> <p>10 MR. WEGLARZ: Sure, sure.</p> <p>11 THE WITNESS: I don't recall saying that</p> <p>12 people don't feel it.</p> <p>13 BY MR. WEGLARZ:</p> <p>14 Q. Well, they feel it to different degrees, correct?</p> <p>15 A. Okay.</p> <p>16 Q. Okay. Did Mr. Kapuscinski seem to be someone who</p> <p>17 wasn't affected by a tase?</p> <p>18 A. I don't know if how he was affected by it or how he</p> <p>19 felt with it.</p> <p>20 Q. Well, based on your observation, he went down pretty</p> <p>21 quick, right?</p> <p>22 A. Yeah. The Taser, it worked on him, yes.</p> <p>23 Q. Sometimes you tase people just like you did</p> <p>24 Mr. Kapuscinski and it doesn't take them down, does it?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Did Robinson ever remove his cartridge?</p> <p>2 A. What are you asking? Removed it when?</p> <p>3 Q. Let me back up. When you say remove the cartridge and</p> <p>4 hold it up to him, are you talking about the same</p> <p>5 cartridge that you use to deploy the darts and the</p> <p>6 probes?</p> <p>7 A. Yes. To drive stun someone with the X26, you would</p> <p>8 remove the probes -- the cartridge with the probes in</p> <p>9 it and then hold it up to them.</p> <p>10 Q. Okay. So once you deploy the probes, if you want, you</p> <p>11 can just go up and drive stun them too, correct?</p> <p>12 A. Correct, but that would also -- if you had that</p> <p>13 cartridge still on, it would also reactivate the probes</p> <p>14 when you pulled the trigger.</p> <p>15 Q. Okay. You don't recall the female ever removing a</p> <p>16 probe from her, would you agree?</p> <p>17 A. I don't recall her doing so, no.</p> <p>18 Q. You don't recall the female ever -- you don't recall a</p> <p>19 probe ever falling off of the female, agreed?</p> <p>20 A. I don't recall. I don't know where the other probe</p> <p>21 went.</p> <p>22 Q. Did you observe Mr. Kapuscinski being tased four times</p> <p>23 in a row, four firings in a row --</p> <p>24 A. No.</p> <p>25 Q. -- for five to six seconds --</p>

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<p style="text-align: right;">Page 125</p> <p>1 MS. FORBUSH: Object to the form.</p> <p>2 BY MR. WEGLARZ:</p> <p>3 Q. -- each firing?</p> <p>4 MS. FORBUSH: Object to the form.</p> <p>5 <b>THE WITNESS: No.</b></p> <p>6 BY MR. WEGLARZ:</p> <p>7 Q. Okay. And you're pretty sure that didn't happen,</p> <p>8 correct?</p> <p>9 <b>A. I am positive that that did not happen.</b></p> <p>10 Q. Okay. One of the reasons why you know that didn't</p> <p>11 happen is because there was no reason for that to</p> <p>12 happen, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. You would agree that if you fired four times, five to</p> <p>15 six seconds apiece consecutively, one after the other,</p> <p>16 that would be excessive, correct?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. And you would agree that, hypothetically, if</p> <p>19 Mr. Kapuscinski was being tased in that manner four</p> <p>20 consecutive times, five to six seconds each time, and</p> <p>21 then you also tased him while that was going on, that</p> <p>22 would obviously be excessive, correct?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And that could cause harm to him, correct?</p> <p>25 <b>A. Correct.</b></p>	<p style="text-align: right;">Page 127</p> <p>1 <b>yes.</b></p> <p>2 Q. When you deployed your Taser, does it make the same</p> <p>3 sound as Robinson's Taser?</p> <p>4 <b>A. A similar sound, yes.</b></p> <p>5 Q. And when you were listening to the video, slash, audio,</p> <p>6 could you hear your Taser being deployed?</p> <p>7 <b>A. I believe so, yes.</b></p> <p>8 Q. Would you agree that it would be excessive to tase</p> <p>9 Mr. Kapuscinski -- Mr. Kapuscinski simply because he</p> <p>10 didn't turn over when instructed?</p> <p>11 <b>A. If there was no other aggressive actions, just not</b></p> <p>12 <b>listening to a verbal command, then yes.</b></p> <p>13 Q. And you do recall when Mr. Kapuscinski was being told</p> <p>14 to turn over, that was when he was on his back,</p> <p>15 correct?</p> <p>16 <b>A. I believe so, yes.</b></p> <p>17 Q. And he wasn't a threat to anyone when he was lying on</p> <p>18 his back, we agree?</p> <p>19 <b>A. No.</b></p> <p>20 Q. You disagree?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Okay. Talking about the kicking motions?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Okay. Have you ever tased anyone while they were lying</p> <p>25 on their back before?</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. After you tased Mr. Kapuscinski, was he still</p> <p>2 breathing?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. What did you do after you deployed your Taser?</p> <p>5 <b>A. After I deployed my Taser, I personally stood by while</b></p> <p>6 <b>Officer Robinson handcuffed Mr. Kapuscinski, then</b></p> <p>7 <b>watched as Officer Robinson got him into what they call</b></p> <p>8 <b>the recovery position, and then we both -- I should</b></p> <p>9 <b>backtrack one second.</b></p> <p>10 Q. Sure.</p> <p>11 <b>A. Immediately after firing my Taser, I requested an</b></p> <p>12 <b>ambulance from the city of Gibraltar. Then after that,</b></p> <p>13 <b>we -- Officer Robinson handcuffed him, got him in the</b></p> <p>14 <b>recovery position. We monitored his vitals until the</b></p> <p>15 <b>ambulance could get there.</b></p> <p>16 Q. And is that routine? Do you always call an ambulance</p> <p>17 when someone gets tased?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Why not call an ambulance the first time Kapuscinski</p> <p>20 was tased?</p> <p>21 <b>A. The scene wasn't secure yet. We still had a violent</b></p> <p>22 <b>suspect that we had to get into custody. We call them</b></p> <p>23 <b>after he's in custody.</b></p> <p>24 Q. Okay. So you do that after he's cuffed.</p> <p>25 <b>A. After the scene is secure, whatever that may entail,</b></p>	<p style="text-align: right;">Page 128</p> <p>1 <b>A. I don't believe so.</b></p> <p>2 Q. Have you ever heard of anyone tasing somebody while the</p> <p>3 suspect was lying on their back?</p> <p>4 <b>A. There's nothing that says that you can't. I'm sure</b></p> <p>5 <b>that people have.</b></p> <p>6 Q. When you were listening to that audio, do you recall</p> <p>7 Robinson yelling at Mr. Kapuscinski to "roll over now</p> <p>8 or I'm going to tase you again"?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Do you recall in the audio either you or Officer</p> <p>11 Robinson telling Mr. Kapuscinski to stop resisting or</p> <p>12 stop being assaultive?</p> <p>13 <b>A. I'm not sure if those are the exact words used, but</b></p> <p>14 <b>Officer Robinson was giving him loud verbal commands to</b></p> <p>15 <b>stop.</b></p> <p>16 Q. Did you hear three tase sounds on the audio? I only</p> <p>17 heard two.</p> <p>18 <b>A. I was only able to hear two.</b></p> <p>19 Q. First one was Robinson's, the second one was yours, do</p> <p>20 we agree on that?</p> <p>21 <b>A. I believe so, yes.</b></p> <p>22 Q. And the time between the two was about 17 seconds from</p> <p>23 a time we hear Robinson's Taser and the time we hear</p> <p>24 your Taser. Is that how you recall it?</p> <p>25 <b>A. I'd have to refer to the MSP report.</b></p>

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<p style="text-align: right;">Page 129</p> <p>1 Q. Sure. You know which one I'm talking about, right?</p> <p>2 <b>A. Yeah. 33. Yes, about 17 seconds.</b></p> <p>3 Q. Okay. And I think we've already established this</p> <p>4 before. Does that sound about right to you? Is that</p> <p>5 what you recall, deploying yours around 17 seconds</p> <p>6 after the first deployment by Robinson?</p> <p>7 <b>A. At the time of the incident I couldn't give you a exact</b></p> <p>8 <b>time. Looking at this, though, 17 seconds, yes.</b></p> <p>9 Q. You don't disagree with that.</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Okay. And any time Robinson is going to be activating</p> <p>12 to fire his Taser again, even though the darts already</p> <p>13 deployed, you're going to be able to hear that because</p> <p>14 it makes a loud noise, right?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. And I take it if you were to hear Officer Robinson</p> <p>17 firing four times consecutively one after the other in</p> <p>18 five- to six-second bursts, you're not going to deploy</p> <p>19 your Taser while that's going on, correct?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. That would be excessive, correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Okay. And do you recall just a few seconds after</p> <p>24 Robinson -- well, let me back up. You do recall</p> <p>25 Robinson saying, "roll over now or I'm going to tase</p>	<p style="text-align: right;">Page 131</p> <p>1 particular point in time that we hear it on the audio?</p> <p>2 <b>A. In case Mr. Kapuscinski started becoming violent again,</b></p> <p>3 <b>if Officer Robinson would have deployed his Taser, then</b></p> <p>4 <b>it would not have worked. I was just letting him know</b></p> <p>5 <b>that his Taser was not going to be effective.</b></p> <p>6 Q. Did it look like Robinson wanted to deploy his Taser</p> <p>7 again --</p> <p>8 <b>A. No.</b></p> <p>9 Q. -- shortly before you verbally warned him of that?</p> <p>10 MS. FORBUSH: Object to the form.</p> <p>11 <b>THE WITNESS: I don't --</b></p> <p>12 BY MR. WEGLARZ:</p> <p>13 Q. Maybe that's why you said -- you told him about it?</p> <p>14 MS. FORBUSH: Object to the form.</p> <p>15 <b>THE WITNESS: I don't know what you're -- I</b></p> <p>16 <b>don't understand the question that you're asking me.</b></p> <p>17 BY MR. WEGLARZ:</p> <p>18 Q. Sure. I hear you on the audio saying, "you only got</p> <p>19 one barb in him." Is the reason why you said that</p> <p>20 because you thought he was about to tase him again?</p> <p>21 <b>A. I don't know. I was just advising him in case the</b></p> <p>22 <b>subject gets violent again and Officer Robinson</b></p> <p>23 <b>attempts to pull his Taser that it's not going to work.</b></p> <p>24 Q. All right. Then, now, up until the point in time that</p> <p>25 you tased Mr. Kapuscinski, you don't remember seeing</p>
<p style="text-align: right;">Page 130</p> <p>1 you," correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And do you recall him saying that just within a few</p> <p>4 seconds, six to eight seconds, after you deployed your</p> <p>5 Taser?</p> <p>6 <b>A. After I deployed my Taser, no, I don't recall him</b></p> <p>7 <b>saying that.</b></p> <p>8 Q. And then do you recall maybe ten seconds after you</p> <p>9 deployed your Taser you mentioning to Robinson that,</p> <p>10 "you only got one barb in there"?</p> <p>11 <b>A. I don't know if it was after I deployed mine or not.</b></p> <p>12 <b>At one point I did.</b></p> <p>13 Q. But you recall hearing yourself say that on the audio,</p> <p>14 correct?</p> <p>15 <b>A. Yeah.</b></p> <p>16 Q. And that's when you first noticed there's only one dart</p> <p>17 or barb sticking in Mr. Kapuscinski.</p> <p>18 <b>A. I had already noticed it. It was the time I was</b></p> <p>19 <b>advising Officer Robinson that.</b></p> <p>20 Q. When you first noticed there was only one barb in</p> <p>21 there, did you advise Officer Robinson of that right</p> <p>22 away?</p> <p>23 <b>A. Right away when I noticed it, no. I did at the time</b></p> <p>24 <b>that I said after what you said.</b></p> <p>25 Q. Why did you think you needed to notify him at this</p>	<p style="text-align: right;">Page 132</p> <p>1 any fecal matter on the floor, do you?</p> <p>2 <b>A. I don't recall what time I noticed that.</b></p> <p>3 Q. Do you recall hearing on the audio it sounded like</p> <p>4 Robinson saying, "Did he shit himself?" Do you</p> <p>5 remember that?</p> <p>6 <b>A. I recall hearing that, yes.</b></p> <p>7 Q. Okay. And then right after that, he says, "He shit</p> <p>8 himself there." Do you remember him saying that to</p> <p>9 you?</p> <p>10 <b>A. I remember him saying that, yes.</b></p> <p>11 Q. And then he pointed out to you where the fecal matter</p> <p>12 was?</p> <p>13 <b>A. I don't recall if he pointed it out.</b></p> <p>14 Q. Did you see it?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Where did you see it?</p> <p>17 <b>A. It was in various parts of the room.</b></p> <p>18 Q. Did you see it on Mr. Kapuscinski?</p> <p>19 <b>A. Not that I recall.</b></p> <p>20 Q. But you understood -- when Officer Robinson said this</p> <p>21 to you, you understood that he was trying to tell you</p> <p>22 that Mr. Kapuscinski defecated on himself, correct?</p> <p>23 MS. FORBUSH: Object to the form, foundation.</p> <p>24 <b>THE WITNESS: I think he was just pointing</b></p> <p>25 <b>out that there was fecal matter in the room.</b></p>



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<p style="text-align: right;">Page 133</p> <p>1 BY MR. WEGLARZ:</p> <p>2 Q. And you didn't notice that before he pointed that out</p> <p>3 to you, fair to say?</p> <p>4 <b>A. I don't recall.</b></p> <p>5 Q. Can you -- I'm going to ask you if you can diagram for</p> <p>6 me very simply a diagram of the room, your location,</p> <p>7 and Mr. Kapuscinski's location when you tased him.</p> <p>8 <b>A. I don't know if I'd be able to give you exact specific</b></p> <p>9 <b>areas.</b></p> <p>10 Q. Just do the best you can.</p> <p>11 MS. McGIFFERT: Well, when you talk about</p> <p>12 location, I mean, unless he can draw it by scale, I'm</p> <p>13 not sure what you're asking him to do.</p> <p>14 MR. WEGLARZ: Just -- I'm just asking for a</p> <p>15 simple diagram, that's all.</p> <p>16 MS. McGIFFERT: Well, counsel, when you say a</p> <p>17 simple diagram, I mean, he's already -- I don't know if</p> <p>18 he knows what you're asking him to do. But a simple</p> <p>19 diagram, you said your location and his location. I</p> <p>20 mean, unless he's drawing it to scale, I don't know</p> <p>21 what the purpose of this diagram is.</p> <p>22 MR. WEGLARZ: Well, we do that all the time.</p> <p>23 MS. McGIFFERT: What are you asking him to</p> <p>24 do?</p> <p>25 MR. WEGLARZ: I want to know where he was and</p>	<p style="text-align: right;">Page 135</p> <p>1 him to draw where he was and where Mr. Kapuscinski was,</p> <p>2 and if it's not to scale, which of course it will not</p> <p>3 be, what is -- it's not going to be an accurate</p> <p>4 rendition of anything.</p> <p>5 MR. WEGLARZ: No, but it gives us a general</p> <p>6 idea, and judges allow us all the time, so your</p> <p>7 objection's noted. And I get it, you have to make that</p> <p>8 part of the record, but I'm still going to ask that he</p> <p>9 do that.</p> <p>10 MS. McGIFFERT: Okay. I'm going to tell the</p> <p>11 witness that that's up to you. You can answer this.</p> <p>12 You're not required to make a diagram, so it's up to</p> <p>13 you if you think you can do what he's asking you to do.</p> <p>14 <b>THE WITNESS: I don't feel at this time I</b></p> <p>15 <b>could depict a fair, accurate diagram.</b></p> <p>16 BY MR. WEGLARZ:</p> <p>17 Q. You can't even tell us in general where you were or</p> <p>18 Mr. Kapuscinski was.</p> <p>19 <b>A. I believe I have already explained in general where we</b></p> <p>20 <b>were at.</b></p> <p>21 Q. All right. But you can't even do a general diagram and</p> <p>22 pinpoint where within a rectangle that represents the</p> <p>23 bedroom where the two of you were when you tased him,</p> <p>24 fair?</p> <p>25 <b>A. I don't think I could come up with an accurate drawing.</b></p>
<p style="text-align: right;">Page 134</p> <p>1 where Mr. Kapuscinski was within that room, that's all.</p> <p>2 It's no different than a auto case. Where was the car</p> <p>3 and what lane were you in?</p> <p>4 MS. FORBUSH: Well, you have a picture of the</p> <p>5 room. Can't we look at the picture and ask questions</p> <p>6 based on the picture? Seems like it would be more</p> <p>7 accurate than having him draw stick figures.</p> <p>8 MR. WEGLARZ: Well, there is no picture that</p> <p>9 shows the full room, so I think that's part of the</p> <p>10 problem.</p> <p>11 MS. McGIFFERT: Well, I'm just going to</p> <p>12 object for the record that you're asking him apparently</p> <p>13 to draw the full room, to draw where he was in</p> <p>14 relationship to Mr. Kapuscinski on a piece of</p> <p>15 8-and-a-half-by-11 paper that, unless he's more of an</p> <p>16 artist than I know about, will not be to scale and,</p> <p>17 therefore, will be inaccurate and later, I'm sure,</p> <p>18 misinterpreted in terms of distances, so I'm not quite</p> <p>19 sure --</p> <p>20 MR. WEGLARZ: And I think --</p> <p>21 MS. McGIFFERT: -- this can be done.</p> <p>22 MR. WEGLARZ: -- we can all agree that it</p> <p>23 will not be a to-scale rendering. Of course it's not.</p> <p>24 MS. McGIFFERT: Well, then, I guess, counsel,</p> <p>25 that's what I'm questioning. If it's you're telling</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. Or something even close to being accurate. It would be</p> <p>2 sheer speculation.</p> <p>3 MS. McGIFFERT: I'm most certainly going to</p> <p>4 instruct him not to come up with anything that would be</p> <p>5 sheer speculation.</p> <p>6 MR. WEGLARZ: Well, that's what I'm trying to</p> <p>7 establish so I can move on. If that's what it is, then</p> <p>8 okay. Then you may have something. But I'm telling</p> <p>9 you, I've taken this issue to the judges before, and</p> <p>10 they said of course they're going to do a diagram,</p> <p>11 okay?</p> <p>12 MS. McGIFFERT: Okay. And I'm going to say</p> <p>13 in all my years of experience, I've never seen or heard</p> <p>14 of a judge forcing someone to do a diagram, especially</p> <p>15 when they say they don't feel they can do it</p> <p>16 accurately, so I don't know what your experience is,</p> <p>17 but that's been my --</p> <p>18 MR. WEGLARZ: Codimer and Jim Ferrell.</p> <p>19 MS. McGIFFERT: Okay. So I'm telling the</p> <p>20 witness that unless the judge instructs him to do it,</p> <p>21 it's his choice. And I've never heard of a judge</p> <p>22 instructing a witness to do something that they say</p> <p>23 they cannot accurately do.</p> <p>24 BY MR. WEGLARZ:</p> <p>25 Q. Okay. So you're not going to do it?</p>

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<p style="text-align: right;">Page 137</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. Okay. Takes care of that. At some point</p> <p>3 Mr. Kapuscinski becomes unresponsive?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Where is the Trenton PD, by the way, at the time that</p> <p>6 you're -- that you tase Mr. Kapuscinski?</p> <p>7 MS. FORBUSH: Object to foundation.</p> <p>8 BY MR. WEGLARZ:</p> <p>9 Q. Go ahead.</p> <p>10 <b>A. I would have no idea where they're at.</b></p> <p>11 Q. Were they at the scene yet?</p> <p>12 <b>A. No.</b></p> <p>13 Q. They do arrive at the scene, right?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And at what point in time do you recall them arriving?</p> <p>16 <b>A. I don't recall when the first officer arrived. I</b></p> <p>17 <b>believe when I went out to my car to get a CPR mask,</b></p> <p>18 <b>one of them was walking in, and I believe the second</b></p> <p>19 <b>one pulled up as I was walking back into the apartment.</b></p> <p>20 Q. Did you look at the Trenton PD records?</p> <p>21 <b>A. No, I did not.</b></p> <p>22 Q. Oh. After Kapuscinski was cuffed by Robinson, what</p> <p>23 position was Robinson in -- I mean Kapuscinski, I'm</p> <p>24 sorry.</p> <p>25 <b>A. He was placed into what was called the recovery</b></p>	<p style="text-align: right;">Page 139</p> <p>1 <b>A. I'm not sure. I've -- outside of this call, I don't</b></p> <p>2 <b>think I've ever actually met him, and I don't think I</b></p> <p>3 <b>met him on this call.</b></p> <p>4 Q. All right. His report mentions that he walks in the</p> <p>5 apartment, he walked to the back bedroom, met with</p> <p>6 Officer Robinson and Officer Mitchell. He says, "I</p> <p>7 observed a naked male lying on his back in the bedroom</p> <p>8 between the two officers. He was unresponsive. His</p> <p>9 arms were behind his back and it appeared that two</p> <p>10 barbs from a Taser were in the center chest region of</p> <p>11 his body." Does that refresh your recollection? Do</p> <p>12 you recall that?</p> <p>13 <b>A. That sounds familiar, yeah.</b></p> <p>14 Q. Okay. So you -- that does sound familiar, Trenton PD</p> <p>15 arrives, and at that time you've got Kapuscinski</p> <p>16 cuffed, laying on his back, unresponsive, two barbs in</p> <p>17 the center chest region.</p> <p>18 <b>A. One, he's unresponsive at this point. He is still</b></p> <p>19 <b>breathing with a pulse I do believe, just not</b></p> <p>20 <b>responding to our questions.</b></p> <p>21 Q. And you believe he's breathing and has a pulse?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Did you check?</p> <p>24 <b>A. Officer Robinson I believe checked.</b></p> <p>25 Q. Do you recall what the pulse was?</p>
<p style="text-align: right;">Page 138</p> <p>1 <b>position.</b></p> <p>2 Q. And he did that right after cuffing him?</p> <p>3 <b>A. I believe so, yes.</b></p> <p>4 Q. And why would you want to put him in the recovery</p> <p>5 position?</p> <p>6 <b>A. It's a safe position for the individual, opens up</b></p> <p>7 <b>airways so they can get oxygen and breathe better. Or</b></p> <p>8 <b>breathe good.</b></p> <p>9 Q. And you mention that you went outside and that's when</p> <p>10 you noticed the Trenton PD walking in while you were</p> <p>11 walking out?</p> <p>12 <b>A. I believe when I was walking out of the apartment one</b></p> <p>13 <b>was walking in. I'm not sure the exact time we walked</b></p> <p>14 <b>past each other.</b></p> <p>15 Q. Sure, sure. And the reason why you were walking out of</p> <p>16 the apartment at that time?</p> <p>17 <b>A. Was to get a CPR mask out in the car.</b></p> <p>18 Q. Okay. And Mr. Kapuscinski was already cuffed and</p> <p>19 placed in the recovery position by this time?</p> <p>20 <b>A. Prior to that, yes.</b></p> <p>21 Q. Okay. Now, if the Trenton Police Department -- if</p> <p>22 their reports mention -- do you know who Patrolperson</p> <p>23 Arnoczki is?</p> <p>24 <b>A. I know him by name.</b></p> <p>25 Q. Did I say it correctly?</p>	<p style="text-align: right;">Page 140</p> <p>1 <b>A. I don't think Officer Robinson took a reading.</b></p> <p>2 Q. And it says the barbs already had their wires detached</p> <p>3 and were lying next to him. Who would have detached</p> <p>4 the wires?</p> <p>5 <b>A. My wires were not detached. I believe my cartridge was</b></p> <p>6 <b>removed and on the ground, and I can't speak for</b></p> <p>7 <b>Officer Robinson's Taser wires, but my wires were kept</b></p> <p>8 <b>intact.</b></p> <p>9 Q. Okay. Both.</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. You believe one was in the abdomen, one was in the</p> <p>12 chest, right?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And then he says, "Officer Robinson stated that the man</p> <p>15 had no pulse and wasn't breathing. Officer Robinson</p> <p>16 checked for a pulse and then requested for Officer</p> <p>17 Mitchell to get his CPR mask from his patrol car." Is</p> <p>18 that how you recall what happened at the scene?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Okay. What's incorrect about that?</p> <p>21 <b>A. Officer Robinson -- or Mr. Kapuscinski still had a</b></p> <p>22 <b>pulse. We observed that it appeared that he stopped</b></p> <p>23 <b>breathing. I then went out to my car to get the CPR</b></p> <p>24 <b>mask. When I came back -- while I was gone, I believe</b></p> <p>25 <b>his pulse stopped and CPR had started.</b></p>



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<p style="text-align: right;">Page 141</p> <p>1 Q. Okay. When you realized that Mr. Kapuscinski had a 2 dart probe in the chest area, I take it you wanted to 3 make sure he was okay because that was a non-preferred 4 target area, correct?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. And you know that if you get hit in that area, that 7 could cause a problem. It's low probability, but it 8 could cause a problem, correct?</p> <p>9 <b>A. Low probability and very rare in circumstances.</b></p> <p>10 Q. And if indeed Mr. Kapuscinski has no pulse and wasn't 11 breathing, he needs medical attention immediately, fair 12 to say?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. And that medical attention would consist of what at a 15 bare minimum?</p> <p>16 <b>A. Bare minimum would be CPR.</b></p> <p>17 Q. Which would mean what?</p> <p>18 <b>A. Chest compressions.</b></p> <p>19 Q. And rescue breaths?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And you know that someone who's been tased in the chest 22 who has no pulse and isn't breathing, if they don't get 23 CPR within the next few minutes, they could really be 24 in trouble.</p> <p>25 MS. FORBUSH: Object to form and foundation.</p>	<p style="text-align: right;">Page 143</p> <p>1 <b>A. I'm not sure exactly what time it was at. It was at --</b> 2 <b>while we were on scene.</b></p> <p>3 Q. I'm assuming that. Where in our sequence? This is 4 after you deployed your Taser obviously.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Is this before you went out to get the CPR mask?</p> <p>7 <b>A. I'm sorry?</b></p> <p>8 Q. Was this before you went out to your car to get the 9 mask?</p> <p>10 <b>A. No, after.</b></p> <p>11 Q. After. And when you brought in the mask, did you 12 assist with CPR?</p> <p>13 <b>A. Yes, I did.</b></p> <p>14 Q. And how did you do that?</p> <p>15 <b>A. At first Officer Robinson performed the chest</b> 16 <b>compressions while I did the rescue breaths portion of</b> 17 <b>CPR. After a few minutes, Officer Robinson and I</b> 18 <b>switched and I did the chest compressions.</b></p> <p>19 Q. Okay. And how long did you do that?</p> <p>20 <b>A. I'm not sure the exact time frame of --</b></p> <p>21 Q. Did you continue to do that up until the time EMS 22 arrived?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And it was after that point in time that you then 25 called Lieutenant Krause?</p>
<p style="text-align: right;">Page 142</p> <p>1 MS. McGIFFERT: Join.</p> <p>2 BY MR. WEGLARZ:</p> <p>3 Q. You can still answer.</p> <p>4 <b>A. I believe so.</b></p> <p>5 Q. Now, throughout the video, slash, audio, sometimes your 6 mic is shut off?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And why -- why was that done?</p> <p>9 <b>A. The reason that I shut my microphone off was to save</b> 10 <b>the battery. It is a battery-operated microphone. The</b> 11 <b>battery does not last very long. When I was outside of</b> 12 <b>the room away from any of the people inside the</b> 13 <b>apartment, I turned my microphone off for brief periods</b> 14 <b>of time just to save the battery on it.</b></p> <p>15 Q. Is that pursuant to policy?</p> <p>16 <b>A. Our policy would be to have it on when we're in contact</b> 17 <b>with people. If I'm away from people by myself, it</b> 18 <b>would be okay to turn it off.</b></p> <p>19 Q. You made some phone calls on your cell phone at the 20 scene, true?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. And who did you call?</p> <p>23 <b>A. I made a call to, now at this time, Lieutenant Krause</b> 24 <b>to advise him of the issue.</b></p> <p>25 Q. And when did you call Lieutenant Krause?</p>	<p style="text-align: right;">Page 144</p> <p>1 <b>A. It was a while after that still, yes.</b></p> <p>2 Q. And that was the first person you called that day after 3 this incident from your cell phone?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Did you receive any calls on your cell phone that 6 evening?</p> <p>7 <b>A. That evening?</b></p> <p>8 Q. Yeah. Or early morning while you were at the scene.</p> <p>9 <b>A. While I was on the phone with Lieutenant Krause,</b> 10 <b>Detective Sergeant Mercure had called me, and then when</b> 11 <b>I got off the phone with Lieutenant Krause, I called</b> 12 <b>him back.</b></p> <p>13 Q. Okay. And what do you recall Lieutenant Krause saying 14 to you?</p> <p>15 <b>A. I don't recall what he said. I just informed him of</b> 16 <b>the situation, and I believe that he was going to come</b> 17 <b>in and assist at some point.</b></p> <p>18 Q. And what would be the reason for you calling Lieutenant 19 Krause?</p> <p>20 <b>A. Per our department policy -- if I can refer to that,</b> 21 <b>I'll give you the exact specific wording and</b> 22 <b>notification of supervisors.</b></p> <p>23 Q. Well, is it a policy that requires you to notify your 24 supervisor?</p> <p>25 <b>A. Yes.</b></p>

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<p style="text-align: right;">Page 145</p> <p>1 Q. And then what did you discuss with -- is it Mercure?</p> <p>2 A. Yes. He is also a supervisor. I just advised him of</p> <p>3 what the situation was.</p> <p>4 Q. Okay. And what did the two of you discuss?</p> <p>5 A. That he was going to come in and -- I'm sorry, I'm</p> <p>6 looking through this for the supervisor notification.</p> <p>7 Q. Do what you have to do.</p> <p>8 A. Any discharge other than the function test, either</p> <p>9 intentional or accidental, shall necessitate (sic) the</p> <p>10 immediate notification of the officer's supervisor.</p> <p>11 Sergeant Mercure advised me that he was going to come</p> <p>12 in to cover any road calls, and then to come back to</p> <p>13 the station after I completed that assist with</p> <p>14 Gibraltar.</p> <p>15 Q. Did you talk about what happened?</p> <p>16 A. I very briefly advised him of what happened.</p> <p>17 Q. And what did you tell him?</p> <p>18 A. I don't recall exactly.</p> <p>19 Q. And what was his response to after you telling him what</p> <p>20 happened?</p> <p>21 A. That he would come in to cover the road calls if we had</p> <p>22 any other future calls until the end of my shift and</p> <p>23 then to come to the station afterwards.</p> <p>24 Q. Now, was it decided that you were going to go home to</p> <p>25 change your clothes?</p>	<p style="text-align: right;">Page 147</p> <p>1 A. Yes.</p> <p>2 Q. Who gave that to you?</p> <p>3 A. Sergeant Mercure.</p> <p>4 Q. And why?</p> <p>5 A. I think that was just a precaution on his part and on</p> <p>6 the department's part.</p> <p>7 Q. Has your employer ever given you a breathalyzer before</p> <p>8 while on duty?</p> <p>9 A. No.</p> <p>10 Q. Did you think it was odd that you were giving a</p> <p>11 breathalyzer for your supervisor while on the job in</p> <p>12 the middle of this incident?</p> <p>13 A. No.</p> <p>14 Q. Did anyone accuse you of having consumed alcohol that</p> <p>15 day?</p> <p>16 A. No.</p> <p>17 Q. Did anyone suspect that perhaps you were under the</p> <p>18 influence or you were consuming alcohol that day?</p> <p>19 A. No.</p> <p>20 Q. Have you heard of any other police officers from</p> <p>21 Rockwood ever having to give a breathalyzer while on</p> <p>22 duty?</p> <p>23 A. Not that I recall, no.</p> <p>24 Q. Can you think of any reason as to why you were being</p> <p>25 asked to give a breathalyzer?</p>
<p style="text-align: right;">Page 146</p> <p>1 A. Yes.</p> <p>2 Q. What led up to that?</p> <p>3 A. While performing CPR, I had fecal matter on my pants,</p> <p>4 on my boots, and I needed to get changed out of that.</p> <p>5 Q. Did Robinson get fecal matter on his uniform?</p> <p>6 A. I don't know.</p> <p>7 Q. And who did you discuss this with?</p> <p>8 A. The fecal matter?</p> <p>9 Q. Wanting to change your clothes because of the fecal</p> <p>10 matter.</p> <p>11 A. The lieutenant at the time, Krause, and Sergeant</p> <p>12 Mercure.</p> <p>13 Q. Okay. Wasn't it first decided that, yeah, you can go</p> <p>14 home and change, and then, well, you know what, why</p> <p>15 don't you meet me at the station instead?</p> <p>16 A. I'm not sure what the sequence of events was. I went</p> <p>17 to the station first before I went home.</p> <p>18 Q. And why did you go to the station first?</p> <p>19 A. To turn my uniform over to Sergeant Mercure.</p> <p>20 Q. He met you up there?</p> <p>21 A. Yes.</p> <p>22 Q. And do you recall what you discussed with Sergeant</p> <p>23 Mercure at the station?</p> <p>24 A. I don't recall what we discussed, no.</p> <p>25 Q. Did they give you a breathalyzer?</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Just as a precaution.</p> <p>2 Q. Precaution for what?</p> <p>3 A. Just proof that I wasn't intoxicated.</p> <p>4 Q. All right. Was someone worried that someone may try to</p> <p>5 allege you were intoxicated?</p> <p>6 MS. MCGIFFERT: Object as to foundation and</p> <p>7 speculation. He can't tell you what -- anyhow, that's</p> <p>8 my objection.</p> <p>9 THE WITNESS: Can you repeat your question?</p> <p>10 I'm sorry.</p> <p>11 BY MR. WEGLARZ:</p> <p>12 Q. Sure. Did anyone tell you that they were worried that</p> <p>13 you would be accused of drinking or being intoxicated?</p> <p>14 A. No.</p> <p>15 Q. Do you know if Officer Robinson had to give a</p> <p>16 breathalyzer?</p> <p>17 A. I don't know.</p> <p>18 Q. Have you heard that he did?</p> <p>19 A. I have not heard.</p> <p>20 Q. Okay. Do you think it's unusual that you gave a</p> <p>21 breathalyzer but not the other officer involved in the</p> <p>22 incident?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of any policy or procedure at the</p> <p>25 department that says we're going to be giving</p>

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<p style="text-align: right;">Page 149</p> <p>1       breathalyzers to our officers involved in incidents</p> <p>2       similar to this --</p> <p>3       <b>A. No.</b></p> <p>4       Q. -- or for any reason?</p> <p>5       <b>A. Not that I'm aware of.</b></p> <p>6       Q. You would agree this is a very unusual thing.</p> <p>7       <b>A. No.</b></p> <p>8       Q. It's not?</p> <p>9       <b>A. No.</b></p> <p>10      Q. And where was the breathalyzer done?</p> <p>11      <b>A. In the garage of the police department.</b></p> <p>12      Q. And it was videotaped?</p> <p>13      <b>A. It was in front of the security camera.</b></p> <p>14      Q. Have you seen that video footage?</p> <p>15      <b>A. I have not.</b></p> <p>16      Q. Do you know what the results were?</p> <p>17      <b>A. Yes.</b></p> <p>18      Q. And what were they?</p> <p>19      <b>A. Point 0000.</b></p> <p>20      Q. And how -- I've never given a breathalyzer. How do</p> <p>21      they do a breathalyzer? Is there a kit?</p> <p>22      <b>A. It's a box about the size of a cell phone with a straw.</b></p> <p>23      <b>You just blow into it.</b></p> <p>24      Q. And then it gives a value?</p> <p>25      <b>A. Yes.</b></p>	<p style="text-align: right;">Page 151</p> <p>1       Q. Following day meaning April the 16th?</p> <p>2       <b>A. No.</b></p> <p>3       Q. 17th?</p> <p>4       <b>A. I believe it was the 17th.</b></p> <p>5               MR. WEGLARZ: We're going to mark this as</p> <p>6       Number 3.</p> <p>7               (At 12:35 p.m., Exhibit 3 marked)</p> <p>8       BY MR. WEGLARZ:</p> <p>9       Q. Exhibit Number 3 represents your case report that you</p> <p>10      drafted on this case, correct?</p> <p>11      <b>A. Yes.</b></p> <p>12      Q. And you drafted it for your employer, correct?</p> <p>13      <b>A. Correct.</b></p> <p>14      Q. And can you tell me where you were when you drafted</p> <p>15      that?</p> <p>16               MS. FORBUSH: What did you mark as Exhibit 3?</p> <p>17               MR. WEGLARZ: His report.</p> <p>18               MS. FORBUSH: It's highlighted. Obviously</p> <p>19      you're not suggesting that it was highlighted in the</p> <p>20      original, correct?</p> <p>21               MR. WEGLARZ: No. Yeah, I'm suggesting that.</p> <p>22      No.</p> <p>23               MS. McGIFFERT: Let me just put that on the</p> <p>24      record. I pose an objection to him utilizing --</p> <p>25      because I have a clean copy if you really want him to</p>
<p style="text-align: right;">Page 150</p> <p>1       Q. And what does that value come up on?</p> <p>2       <b>A. It comes up on a screen.</b></p> <p>3       Q. The screen of?</p> <p>4       <b>A. The PBT, the pulmonary breath test.</b></p> <p>5       Q. Okay. And is that recorded or documented anywhere?</p> <p>6       <b>A. I believe it's documented in Sergeant Mercure's report.</b></p> <p>7       Q. But that test was recorded on video, right?</p> <p>8       <b>A. On the security camera in the garage, yes.</b></p> <p>9       Q. Okay. Have any coworkers ever made any complaints</p> <p>10      about you, your activities, your conduct or behavior at</p> <p>11      the department?</p> <p>12      <b>A. Not that I'm aware of.</b></p> <p>13      Q. Has anyone ever accused you of drinking alcohol or</p> <p>14      being under the influence --</p> <p>15      <b>A. No.</b></p> <p>16      Q. -- either on the job or to a point or at a time where</p> <p>17      it may interfere with you carrying out your job?</p> <p>18      <b>A. No.</b></p> <p>19      Q. When did you draft your original complaint report?</p> <p>20      <b>A. I'm not sure exactly what date and time it was written</b></p> <p>21      <b>at.</b></p> <p>22      Q. Well, did you do it that night?</p> <p>23      <b>A. No.</b></p> <p>24      Q. The following day?</p> <p>25      <b>A. I believe it was the following day.</b></p>	<p style="text-align: right;">Page 152</p> <p>1       use it.</p> <p>2               MR. WEGLARZ: I don't care.</p> <p>3               MS. McGIFFERT: I object to utilizing a</p> <p>4      highlighted copy as an exhibit in this deposition when</p> <p>5      you've done the highlighting. If you'd like a clean</p> <p>6      copy, we can provide one.</p> <p>7               MR. WEGLARZ: Okay. We can copy it after.</p> <p>8      Laurel, I'm here to help you, make this easier for you,</p> <p>9      so whatever you want.</p> <p>10              MS. McGIFFERT: No, you're not. What I want</p> <p>11      is, if you're going to use his report as an exhibit --</p> <p>12      can I see yours, Todd? What I want is that you use a</p> <p>13      clean copy, and I'm sure Ms. Court Reporter won't mind</p> <p>14      marking this clean copy --</p> <p>15              MR. WEGLARZ: Or we can just copy this after,</p> <p>16      but it's fine.</p> <p>17              MS. McGIFFERT: -- as Exhibit 3.</p> <p>18              MR. WEGLARZ: Just mark it again. It's fine.</p> <p>19              MS. McGIFFERT: I need to make a call soon.</p> <p>20              MR. WEGLARZ: Sure. Want to do it now?</p> <p>21              MS. McGIFFERT: Well, how much longer do you</p> <p>22      estimate? Because maybe we can just finish him up.</p> <p>23              MR. WEGLARZ: Twenty minutes.</p> <p>24              MS. McGIFFERT: That will work for me.</p> <p>25      BY MR. WEGLARZ:</p>

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<p>1 Q. Okay. All right. We've marked your report as Exhibit 2 Number 3, correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. Okay. Where were you when you drafted that report?</p> <p>5 <b>A. I was at the Rockwood Police Department.</b></p> <p>6 Q. And you typed it yourself?</p> <p>7 <b>A. I typed it with a union attorney in the room.</b></p> <p>8 Q. Okay. In fact, you didn't fill out any reports or 9 statements until you first discussed this with an 10 attorney, fair to say?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. And you didn't want to fill out a report like this 13 until you had the input and assistance from an 14 attorney, fair to say?</p> <p>15 <b>A. Correct.</b></p> <p>16 MS. FORBUSH: Object to form.</p> <p>17 BY MR. WEGLARZ:</p> <p>18 Q. And as you typed up this three-page statement -- 19 objection, four-page statement, your attorney was 20 present the entire time, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. He was right next to you as you typed it up, correct?</p> <p>23 <b>A. He was in the room with me, yes.</b></p> <p>24 Q. And I don't want to know what you discussed, but I take 25 it as you were drafting this four-page document while</p>	<p>1 <b>copy, which is this copy, which doesn't get a signature</b> 2 <b>on it or have a signature on it, but the signature copy</b> 3 <b>is on file with the Rockwood Police Department.</b></p> <p>4 Q. Is there any difference between this computerized 5 version marked as Exhibit 3 and the version that you 6 signed?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Did you make any other notes or reports besides Exhibit 9 Number 3 regarding this incident?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Any of your supervisors or coworkers or colleagues ever 12 discuss this incident with you?</p> <p>13 <b>A. Outside of like a training purpose, no.</b></p> <p>14 Q. How about for a training purpose?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Explain.</p> <p>17 <b>A. In a Taser training class it was discussed one time.</b></p> <p>18 Q. Okay. And when was that discussed?</p> <p>19 <b>A. I couldn't give you the exact time. I don't know.</b></p> <p>20 Q. Within a few days of this incident, couple months, a 21 year?</p> <p>22 <b>A. Within a couple years after.</b></p> <p>23 Q. Okay. And tell me what was -- tell me how it was 24 discussed.</p> <p>25 <b>A. I don't recall. It would just have been the</b></p>
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<p>1 he was in the room, the two of you also had 2 discussions, correct?</p> <p>3 <b>A. I don't recall what, if anything, was said.</b></p> <p>4 Q. Anyone else in the room?</p> <p>5 <b>A. No.</b></p> <p>6 Q. How long did it take you to type this up?</p> <p>7 <b>A. I don't recall.</b></p> <p>8 Q. Couple hours, couple minutes?</p> <p>9 <b>A. I don't recall the exact time frame that it took.</b></p> <p>10 Q. You finished it, though, during that same sitting?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Okay. And what did you do after you finished it? Did 13 you print it out?</p> <p>14 <b>A. Yeah, it would have been printed.</b></p> <p>15 Q. Okay. Do you typically sign reports like this?</p> <p>16 <b>A. I sign them after they are reviewed by a supervisor.</b></p> <p>17 Q. Was this report ever reviewed by a supervisor?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Okay. And did you sign off on it?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Have you seen the signed-off version?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Oh. When's the last time you saw that version?</p> <p>24 <b>A. It's been a while. Our reports are signed and then</b> 25 <b>they are filed away, and the -- there is a computerized</b></p>	<p>1 <b>walk-through from start to finish.</b></p> <p>2 Q. Okay. And who did the training where they presented 3 this?</p> <p>4 <b>A. Lieutenant Krause would have been doing the Taser</b> 5 <b>training, and just me in the class talked about it --</b></p> <p>6 Q. Okay.</p> <p>7 <b>A. -- the story of it.</b></p> <p>8 Q. And did Lieutenant Krause have you walk everybody 9 through this incident step by step?</p> <p>10 <b>A. I don't recall.</b></p> <p>11 Q. Do you know if there are any written materials or 12 summaries of this incident that were used or referenced 13 as part of this training?</p> <p>14 <b>A. There are not.</b></p> <p>15 Q. And was the purpose of this to show everyone how to 16 best handle a situation like this and how to best use a 17 Taser?</p> <p>18 <b>A. I am not sure what the objective of it necessarily was,</b> 19 <b>other than just informative of a Taser scenario.</b></p> <p>20 Q. Okay. What parts of this scenario were used or 21 referenced as the informative parts?</p> <p>22 <b>A. Just the story from front to beginning.</b></p> <p>23 Q. So you're saying everything.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Anything -- what specific topics or subjects do you</p>

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<p style="text-align: right;">Page 157</p> <p>1 recall them mentioning?</p> <p>2 <b>A. I don't recall anything specifically.</b></p> <p>3 Q. Do you recall any subjects, topics, or facts that were</p> <p>4 brought up where they said, you know, maybe from</p> <p>5 hindsight this should have been done differently?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Okay. So how this situation was handled sounds like</p> <p>8 it's being used as an exemplar as how to handle all</p> <p>9 such situations similar to this.</p> <p>10 <b>A. I can't really agree or disagree with that. It's just</b></p> <p>11 <b>a scenario. Every scenario is different. This is just</b></p> <p>12 <b>one thing that happened.</b></p> <p>13 Q. Okay. Other than you and Lieutenant Krause, anyone</p> <p>14 else who participated in the presentation of that</p> <p>15 training?</p> <p>16 <b>A. Not that I recall.</b></p> <p>17 Q. Okay. Anywhere else where this incident was</p> <p>18 discussed --</p> <p>19 <b>A. No.</b></p> <p>20 Q. -- by your employers or colleagues other than the</p> <p>21 training scenario?</p> <p>22 <b>A. No.</b></p> <p>23 Q. In your complaint record you provided the statement to</p> <p>24 the state police. Any other statements you provided to</p> <p>25 anyone else?</p>	<p style="text-align: right;">Page 159</p> <p>1 "Answer: I -- his whole body was an area. I</p> <p>2 was attempting to aim for the non-preferred</p> <p>3 areas on his body. He was a moving target.")</p> <p>4 MS. McGIFFERT: Okay.</p> <p>5 MR. WEGLARZ: I'm fine with it.</p> <p>6 MS. McGIFFERT: I just needed the question</p> <p>7 and answer.</p> <p>8 MR. WEGLARZ: Sure.</p> <p>9 BY MR. WEGLARZ:</p> <p>10 Q. Let me throw something out there. Because of his</p> <p>11 position right before you deployed the Taser, this is</p> <p>12 when he was in the process of trying to stand up,</p> <p>13 correct?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. His legs were available to hit if you wanted to hit</p> <p>16 them, correct?</p> <p>17 <b>A. I guess so, yes.</b></p> <p>18 Q. His arms would have been exposed, correct?</p> <p>19 <b>A. I guess so, yes.</b></p> <p>20 Q. His lower abdomen was exposed, correct?</p> <p>21 <b>A. I guess so, yes.</b></p> <p>22 Q. When did you fill out the Taser report?</p> <p>23 <b>A. I believe that would have been done with my complaint</b></p> <p>24 <b>report as that's part of my complaint report.</b></p> <p>25 Q. Same date, same sitting?</p>
<p style="text-align: right;">Page 158</p> <p>1 <b>A. No.</b></p> <p>2 Q. Did you ever meet with a prosecutor?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Did anyone criticize anything about you or about how</p> <p>5 you handled or reacted to this situation?</p> <p>6 <b>A. Not that I know of.</b></p> <p>7 Q. Would you agree with me that at the time you deployed</p> <p>8 your Taser, Mr. Kapuscinski's chest area was not the</p> <p>9 only area that was available to hit with the probes?</p> <p>10 MS. McGIFFERT: Object as to form.</p> <p>11 MS. FORBUSH: Join.</p> <p>12 BY MR. WEGLARZ:</p> <p>13 Q. Go ahead.</p> <p>14 <b>A. I -- his whole body was an area. I was attempting to</b></p> <p>15 <b>aim for the non-preferred areas on his body. He was a</b></p> <p>16 <b>moving target.</b></p> <p>17 Q. Right. This wasn't a situation --</p> <p>18 MS. McGIFFERT: I'm sorry, can I hear that</p> <p>19 question and answer again, please?</p> <p>20 (At 12:46 p.m., the court reporter read back:</p> <p>21 "Question: Would you agree with me that at</p> <p>22 the time you deployed your Taser,</p> <p>23 Mr. Kapuscinski's chest area was not the only</p> <p>24 area that was available to hit with the</p> <p>25 probes?</p>	<p style="text-align: right;">Page 160</p> <p>1 <b>A. I believe so.</b></p> <p>2 MR. WEGLARZ: Okay. And I'm going to mark it</p> <p>3 as the next exhibit, but it's going to have highlights</p> <p>4 on it, so I'm warning you right now if you want to</p> <p>5 attach yours, Laurel, that's fine.</p> <p>6 MS. McGIFFERT: I'm sorry, say it again?</p> <p>7 MR. WEGLARZ: His Taser use report. I want</p> <p>8 to attach it.</p> <p>9 MS. McGIFFERT: You may use mine. Let me</p> <p>10 find it first. Because you're saying yours is</p> <p>11 highlighted?</p> <p>12 MR. WEGLARZ: Yes.</p> <p>13 MS. McGIFFERT: I'll find you one.</p> <p>14 MR. WEGLARZ: Thank you.</p> <p>15 MS. McGIFFERT: Let's find yours. Page 23.</p> <p>16 You can give those to her.</p> <p>17 (At 12:50 p.m., Exhibit 4 marked)</p> <p>18 BY MR. WEGLARZ:</p> <p>19 Q. All right. We marked as Exhibit Number 4 your Taser</p> <p>20 use report, is that correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. That's a report you filled out in connection with the</p> <p>23 use of your Taser in this incident involving</p> <p>24 Mr. Kapuscinski?</p> <p>25 <b>A. Yes.</b></p>

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<p style="text-align: right;">Page 161</p> <p>1 Q. All right. And on that report you indicate where the 2 probes from your Taser struck Mr. Kapuscinski, is that 3 correct? 4 <b>A. Yes.</b> 5 Q. Okay. And you do show one up by the left chest area, 6 correct? 7 <b>A. This is not exactly to scale, but yes.</b> 8 Q. Yeah. And you also indicate the other location is 9 where? 10 <b>A. The lower right abdomen.</b> 11 Q. Is that to scale? 12 <b>A. Neither of them are exact locations. They're</b> 13 <b>estimates.</b> 14 Q. Right. But you still do the diagram for informative 15 purposes, correct? 16 <b>A. Yes.</b> 17 Q. Now, have you seen the photos of Mr. Kapuscinski that 18 were taken at the hospital? 19 <b>A. At the hospital, no, I have not.</b> 20 Q. What photos of Kapuscinski have you seen? 21 <b>A. I have seen the medical examiner's photos.</b> 22 Q. Oh, okay. I think they're the same thing. I'm going 23 to show you this photo, and I apologize for maybe some 24 insensitive imagery, but -- 25 MS. FORBUSH: Do you have a number on it or</p>	<p style="text-align: right;">Page 163</p> <p>1 <b>A. Yes.</b> 2 Q. Do you know what that's from? 3 <b>A. I do not.</b> 4 Q. Okay. So one of these -- this one you believe, the one 5 right in the middle of this space here you believe is 6 from your probe, right? 7 <b>A. Yes.</b> 8 MS. FORBUSH: Object to foundation. 9 MS. MCGIFFERT: I join. 10 MS. FORBUSH: Maybe you should ask him how 11 many probe wounds he's looked at to establish if he has 12 a foundation for an opinion. 13 BY MR. WEGLARZ: 14 Q. All right. And where do you think the other probe 15 landed? 16 <b>A. Looking at this picture I believe, but I'm not</b> 17 <b>100 percent certain, it's that one right there.</b> 18 Q. Okay. And that's on the right side of the abdomen 19 where we see two wounds next to each other, correct? 20 <b>A. Yes.</b> 21 Q. Okay. Just above the naval but on the right side, 22 correct? 23 <b>A. Yes.</b> 24 Q. There's also a wound it looks like in the midsternum 25 here. Do you have any idea what that is?</p>
<p style="text-align: right;">Page 162</p> <p>1 -- 2 MR. WEGLARZ: Yeah. It's from -- the number 3 is -- must be a case number, but it's 15, dash, 4606F, 4 dash, 20. 5 MS. MCGIFFERT: 15, dash, 46 -- 6 MR. WEGLARZ: 06F, dash, 20. And I believe 7 that was in the Michigan State Police file, which I 8 think they got from Gibraltar. 9 BY MR. WEGLARZ: 10 Q. So I'm going to show you this photo of Mr. Kapuscinski. 11 Can you tell me where on his body the probes were? Do 12 they correlate to any of the wounds that we see here? 13 MS. MCGIFFERT: You mean the probes from -- 14 MR. WEGLARZ: His Taser. 15 MS. MCGIFFERT: -- Officer Mitchell's 16 deployment. 17 MR. WEGLARZ: Yes. 18 BY MR. WEGLARZ: 19 Q. If that helps you. 20 <b>A. One of them would be right here.</b> 21 Q. All right. And you're pointing to a wound, and it 22 looks like it's an area of a tattoo that he has on the 23 left chest, right? 24 <b>A. Yes.</b> 25 Q. Do you see that?</p>	<p style="text-align: right;">Page 164</p> <p>1 MS. FORBUSH: Object to the form. 2 <b>THE WITNESS: I would have no idea.</b> 3 BY MR. WEGLARZ: 4 Q. Do you know what a sternal rub is? 5 <b>A. Yes.</b> 6 Q. Could that be from a sternal rub? 7 <b>A. I have no idea.</b> 8 MS. FORBUSH: Object to foundation. 9 BY MR. WEGLARZ: 10 Q. Just give me a minute. Did you have any discussions 11 with the girlfriend? 12 <b>A. I do not believe that I talked to her at all. I was</b> 13 <b>standing by Officer Robinson as he talked to her about</b> 14 <b>the incident.</b> 15 Q. Okay. Did you overhear Officer Robinson's discussions 16 with the girlfriend? 17 <b>A. Yes.</b> 18 Q. Okay. And tell me what you recall hearing. 19 <b>A. I would have to refer to my report on exactly what was</b> 20 <b>said.</b> 21 Q. You're talking about your report that we've already 22 marked as an exhibit? 23 <b>A. Yes.</b> 24 Q. Exhibit Number 3? 25 <b>A. Yes.</b></p>



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<p style="text-align: right;">Page 165</p> <p>1 Q. And if you're going to tell me that anything that you 2 overheard about that would be reflected in your report, 3 that's all you need to tell me, but if you think you 4 need to look at it to refresh your memory to see if 5 there's something else, then feel free to do so.</p> <p>6 <b>A. Everything would have been reflected here in the 7 report.</b></p> <p>8 Q. Okay. In your audio statement to the Michigan State 9 Police, you mentioned to them that you didn't see any 10 injuries on the girlfriend. Is that your recollection?</p> <p>11 <b>A. I don't recall what I spoke with the state police 12 about.</b></p> <p>13 Q. Do you recall seeing any injuries on the girlfriend?</p> <p>14 <b>A. I do not recall seeing any physical injuries that were 15 apparent there immediately.</b></p> <p>16 Q. And then you also told the state police that when you 17 guys walked in, it just looked like a weird sex act was 18 going on.</p> <p>19 MS. McGIFFERT: Well, you know what? Let me 20 pose an objection because it sounds to me like you're 21 paraphrasing. If you want to ask him if he said or 22 recalls saying X, Y, and Z to the state police, that's 23 fine.</p> <p>24 MR. WEGLARZ: That's kind of what I'm getting 25 at.</p>	<p style="text-align: right;">Page 167</p> <p>1 <b>A. I don't know how she was feeling.</b></p> <p>2 Q. You didn't hear her say anything like that.</p> <p>3 <b>A. She didn't verbalize to us that she -- no.</b></p> <p>4 Q. I mean, she seemed to be pretty comfortable with the 5 whole thing, correct?</p> <p>6 MS. FORBUSH: Well, I'm going to object to 7 the form. Are you suggesting she was comfortable when 8 she was being choked and he said she couldn't talk and 9 was gasping for breath?</p> <p>10 MR. WEGLARZ: Save the closing argument for 11 the closing argument.</p> <p>12 MS. FORBUSH: Come on. Let's ask a fair 13 question.</p> <p>14 MR. WEGLARZ: Well, it is a fair question 15 because it's what he said to the state police.</p> <p>16 BY MR. WEGLARZ:</p> <p>17 Q. You thought it was kind of strange that she was so calm 18 throughout this entire thing, do you agree?</p> <p>19 MS. McGIFFERT: I will place an objection as 20 to form and foundation. Go ahead if you want to answer 21 the question.</p> <p>22 <b>THE WITNESS: If I could hear back what you 23 said, I think you kind of asked two different 24 questions.</b></p> <p>25 BY MR. WEGLARZ:</p>
<p style="text-align: right;">Page 166</p> <p>1 MS. McGIFFERT: Well, okay. That was a 2 statement, not a question. You told him what he 3 allegedly said to the state police in a 4 paraphrased-type manner.</p> <p>5 MR. WEGLARZ: Yes. I'm about to ask the 6 question now.</p> <p>7 MS. McGIFFERT: Okay.</p> <p>8 BY MR. WEGLARZ:</p> <p>9 Q. Do you recall saying something like that to that effect 10 to the state police?</p> <p>11 <b>A. I did not tell them that it was a -- that we walked in 12 on a sex act. They asked me to describe their 13 positioning, at which time I told them that the only 14 way I could describe it would be the 69 position 15 because that's where their bodies were at.</b></p> <p>16 Q. But you don't recall saying, "It looked like a weird 17 sex act when we walked in."</p> <p>18 <b>A. I don't recall that. I don't recall what I said with 19 the state police.</b></p> <p>20 Q. And you also mentioned to the state police that the 21 girlfriend was very calm throughout, do you remember 22 that?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. She never yelled or complained that she felt threatened 25 or was -- or she was about to be harmed, did she?</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. I may have. Do you recall the girlfriend being very 2 calm at the scene?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Okay. And that's what you explained to the state 5 police, correct?</p> <p>6 <b>A. I haven't listened to the recording of me from the 7 state police. I don't recall exactly what I told them.</b></p> <p>8 Q. Fair enough. Do you recall telling the state police 9 that the girlfriend kept saying that she was giving a 10 good blow job to him?</p> <p>11 <b>A. I don't recall saying that to the state police. I do 12 recall her saying that.</b></p> <p>13 Q. And when you recall her saying that, where in this 14 sequence?</p> <p>15 <b>A. I should rephrase that. She did not say that she was 16 giving him a good blow job. She said that she gives a 17 good blow job. She was not giving one at the time I 18 don't think is what she was getting at.</b></p> <p>19 Q. All right. Well, I know Laurel doesn't want me to 20 finish the dep until I get that out, and I did, so we 21 can stop your deposition now. I have no further 22 questions.</p> <p>23 MS. FORBUSH: I'm going to have a few 24 questions. Laurel, make your call, and I'm going to 25 use the restroom.</p>

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<p style="text-align: right;">Page 169</p> <p>1 (At 1:00 p.m., recess taken)</p> <p>2 (At 1:22 p.m., back on the record)</p> <p>3 CROSS-EXAMINATION</p> <p>4 BY MS. FORBUSH:</p> <p>5 Q. I just have a couple questions, if that's okay.</p> <p>6 Officer Mitchell, at one point I thought you testified</p> <p>7 that when you aimed your Taser at Mr. Kapuscinski, you</p> <p>8 were aiming at a non-preferred target area. Did you</p> <p>9 misspeak?</p> <p>10 A. <b>If I said non-preferred target area, then yes, I</b></p> <p>11 <b>misspoke. At all times I was aiming for preferred</b></p> <p>12 <b>target areas.</b></p> <p>13 Q. Okay. And I assume that with a Taser, much like a</p> <p>14 handgun, when the target is moving, you don't always</p> <p>15 hit the area that you're aiming for, is that true?</p> <p>16 A. <b>That's true, correct.</b></p> <p>17 Q. Okay. And Mr. Kapuscinski I think you said was moving</p> <p>18 the entire time.</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. All right. Going back prior to your use of the Taser,</p> <p>21 when Officer Robinson had tased Mr. Kapuscinski, you</p> <p>22 had indicated he had rolled or landed onto the floor</p> <p>23 and was kicking, resisting, not following commands, and</p> <p>24 was being actively aggressive, correct?</p> <p>25 A. <b>Yes.</b></p>	<p style="text-align: right;">Page 171</p> <p>1 A. <b>Correct.</b></p> <p>2 Q. Okay. And do you know if he attempted more than once</p> <p>3 to try to taser Mr. Kapuscinski?</p> <p>4 A. <b>I don't know how many times he attempted.</b></p> <p>5 Q. Okay. Other than the first time, which caused</p> <p>6 Mr. Kapuscinski and his victim to separate physically,</p> <p>7 did you see any effect of any Taser applications by</p> <p>8 Officer Robinson?</p> <p>9 A. <b>No.</b></p> <p>10 Q. You never saw Mr. Kapuscinski get shocked after the</p> <p>11 first attempt.</p> <p>12 A. <b>No.</b></p> <p>13 Q. And was it because Officer Robinson's attempts to taser</p> <p>14 Mr. Kapuscinski were ineffective that you had to deploy</p> <p>15 your Taser to stop the threat of Mr. Kapuscinski?</p> <p>16 A. <b>Yes.</b></p> <p>17 Q. Do you have to wait until the subject is actually upon</p> <p>18 you and lunging and touching you to stop the threat?</p> <p>19 A. <b>No.</b></p> <p>20 Q. Okay. I would assume that this happened rather</p> <p>21 quickly.</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. I think Mr. Weglarz suggested that from the time</p> <p>24 Officer Robinson deployed his Taser the first time and</p> <p>25 the time you deployed your Taser the only time you</p>
<p style="text-align: right;">Page 170</p> <p>1 Q. And was it at that point when Officer Robinson</p> <p>2 attempted to taser him a second time?</p> <p>3 A. <b>After giving loud verbal commands to stop, yes.</b></p> <p>4 Q. All right. And when Officer Robinson pulled the</p> <p>5 trigger on his Taser, what happened?</p> <p>6 A. <b>When Officer Robinson pulled it for the second time,</b></p> <p>7 <b>nothing happened due to only having one probe in it --</b></p> <p>8 <b>or in Mr. Kapuscinski. He was not under any affect of</b></p> <p>9 <b>the Taser.</b></p> <p>10 Q. So help me understand. When the -- in order for the</p> <p>11 Taser to be effective, both probes have to be in the</p> <p>12 subject.</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. And you had already testified that you believed Officer</p> <p>15 Robinson had hit him once in the back of the right arm</p> <p>16 near the elbow and that you never saw the other probe.</p> <p>17 A. <b>Correct.</b></p> <p>18 Q. And you never saw the other probe at any time anywhere</p> <p>19 on Mr. Kapuscinski's body.</p> <p>20 A. <b>Correct.</b></p> <p>21 Q. So when he attempted to activate his Taser the second</p> <p>22 time, was it effective?</p> <p>23 A. <b>No, it was not.</b></p> <p>24 Q. And that's because there was no circuit completed and</p> <p>25 Mr. Kapuscinski didn't get shocked, right?</p>	<p style="text-align: right;">Page 172</p> <p>1 deployed it was a total of 17 seconds.</p> <p>2 A. <b>I believe that's what he said, yes.</b></p> <p>3 Q. All right. And you're familiar with the term</p> <p>4 reactionary gap I assume?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. All right. Were you trying to maintain some type of</p> <p>7 distance or reactionary gap between yourself and</p> <p>8 Mr. Kapuscinski?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. And you were asked about what you observed when you</p> <p>11 first walked into that bedroom. Would it be fair to</p> <p>12 state that you saw Mr. Kapuscinski trying to kill this</p> <p>13 woman by choking her to death?</p> <p>14 A. <b>Yes, he was.</b></p> <p>15 Q. All right. And did this woman appear to be cool, calm,</p> <p>16 and collected as she was being choked and was gasping</p> <p>17 for a breath?</p> <p>18 A. <b>No, she did not.</b></p> <p>19 Q. All right. And she fled the room as fast as she was</p> <p>20 able to, is that correct?</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. And afterwards, after Mr. Kapuscinski had been</p> <p>23 handcuffed and subdued, is that when you had some</p> <p>24 limited interaction with this woman where she seemed to</p> <p>25 be very calm?</p>

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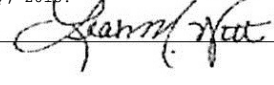
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<p style="text-align: right;">Page 173</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you know what drugs, if any, she was under</p> <p>3 the influence of?</p> <p>4 A. I do not know what drugs, if any, she was on.</p> <p>5 Q. At any time did you punch, hit, strike, or kick</p> <p>6 Mr. Kapuscinski?</p> <p>7 A. No.</p> <p>8 Q. At any time did you see Officer Robinson punch, hit,</p> <p>9 strike, or kick Mr. Kapuscinski?</p> <p>10 A. No.</p> <p>11 Q. And, in fact, once Mr. Kapuscinski was subdued and</p> <p>12 handcuffed behind his back, both of you immediately</p> <p>13 ensured that he was in a recovery position so that his</p> <p>14 breathing could be monitored, is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. I don't think I have any other questions. Thank you.</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MS. McGIFFERT:</p> <p>19 Q. I have just a few. Officer Mitchell, you were asked</p> <p>20 questions about your initial Taser training, which I</p> <p>21 think you testified was in 2012.</p> <p>22 A. Yes.</p> <p>23 Q. And according to the certificates that we have in front</p> <p>24 of us that we have provided to Mr. Weglarz, am I</p> <p>25 correct that you had additional Taser conductor</p>	<p style="text-align: right;">Page 175</p> <p>1 A. Yes, I did.</p> <p>2 Q. You were asked some questions about drafting your</p> <p>3 report of this incident, and you testified that your --</p> <p>4 that there was a union attorney present when you</p> <p>5 drafted it.</p> <p>6 A. Yes.</p> <p>7 Q. Even though he was present, who drafted the report?</p> <p>8 A. I did.</p> <p>9 Q. And is everything in that report true and accurate</p> <p>10 based on your recollection and your observation of the</p> <p>11 events at the time?</p> <p>12 A. Yes, it is.</p> <p>13 Q. I don't have anything further. Thank you.</p> <p>14 - - -</p> <p>15 REDIRECT EXAMINATION</p> <p>16 BY MR. WEGLARZ:</p> <p>17 Q. Was there anything about the Taser that did not</p> <p>18 function properly, your Taser?</p> <p>19 A. No, there was not.</p> <p>20 Q. Prior to the first tase on Mr. Kapuscinski, do you</p> <p>21 recall hearing any warnings that "if you don't stop,</p> <p>22 you're going to be tased"?</p> <p>23 A. No, I do not.</p> <p>24 Q. That's the policy, isn't it, at the department?</p> <p>25 A. When feasible.</p>
<p style="text-align: right;">Page 174</p> <p>1 electrical weapon training in July 2013?</p> <p>2 A. Yes.</p> <p>3 Q. And then thereafter did you have additional updated</p> <p>4 training on the Taser conducted electrical weapon in</p> <p>5 January 2014?</p> <p>6 A. Yes.</p> <p>7 Q. And am I correct that you also had additional training</p> <p>8 on the conducted electrical weapon, or what we've been</p> <p>9 referring to as a Taser, both the X2 and the X26, on</p> <p>10 February 25th, 2015?</p> <p>11 A. Yes.</p> <p>12 Q. So you had been trained on the use of the weapon that</p> <p>13 you were carrying on April 16th, 2015, as recently as</p> <p>14 less than two months before.</p> <p>15 A. Yes.</p> <p>16 Q. Even though there was some reference to you thinking at</p> <p>17 the time that one of Officer Robinson's probes may have</p> <p>18 entered into, for lack of a better word, the</p> <p>19 girlfriend, did you ever see any probe in her?</p> <p>20 A. I did not.</p> <p>21 Q. Okay. When you first entered the room and shortly</p> <p>22 thereafter, meaning the back bedroom, and Officer</p> <p>23 Robinson was giving loud verbal commands for</p> <p>24 Mr. Kapuscinski to get off of the female, did you form</p> <p>25 any belief that her life was in danger?</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. And you also did not give any type of warning or</p> <p>2 instruction, would you agree?</p> <p>3 A. Correct.</p> <p>4 Q. Did you see the photos showing the marks on</p> <p>5 Mr. Kapuscinski's hand?</p> <p>6 A. I did not.</p> <p>7 Q. Pull it up real quick. That's not a good copy. Just</p> <p>8 give me a second.</p> <p>9 (At 1:33 p.m., Exhibit 5 marked)</p> <p>10 BY MR. WEGLARZ:</p> <p>11 Q. Let me show you what we marked Exhibit Number 5, photos</p> <p>12 of Mr. Kapuscinski's right extremity. Do you see those</p> <p>13 marks around his wrist area?</p> <p>14 MS. McGIFFERT: Let me check, counsel.</p> <p>15 MR. WEGLARZ: Sure.</p> <p>16 MS. FORBUSH: Which -- if you tell me which</p> <p>17 number we're on?</p> <p>18 MR. WEGLARZ: I don't know the number. It's</p> <p>19 my hard copy.</p> <p>20 MS. FORBUSH: It should have the number --</p> <p>21 MR. WEGLARZ: Maybe on the back? On the back</p> <p>22 it may be.</p> <p>23 MS. FORBUSH: Oh, wait. These are the ones</p> <p>24 from -- those aren't the autopsy photos. I think I</p> <p>25 have these.</p>

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<p>1 MS. McGIFFERT: What is this, Exhibit 5?</p> <p>2 MR. WEGLARZ: Yes.</p> <p>3 MS. McGIFFERT: Okay.</p> <p>4 MR. WEGLARZ: There's a number on the back of</p> <p>5 it from the -- I think it's from Gibraltar PD.</p> <p>6 MS. FORBUSH: It just says 15, dash, 217,</p> <p>7 which I think is the case number.</p> <p>8 MR. WEGLARZ: Yeah, you're right. Sorry.</p> <p>9 MS. FORBUSH: I've got it. And that's Number</p> <p>10 5?</p> <p>11 MR. WEGLARZ: Yes.</p> <p>12 BY MR. WEGLARZ:</p> <p>13 Q. All right. The marks that we see around his wrist</p> <p>14 there in Exhibit 5, do you have any idea or</p> <p>15 understanding as to what caused those?</p> <p>16 A. I do not.</p> <p>17 Q. Do those appear to be marks consistent with handcuffs?</p> <p>18 MS. FORBUSH: Object to foundation.</p> <p>19 MS. McGIFFERT: Join.</p> <p>20 THE WITNESS: I couldn't tell you.</p> <p>21 BY MR. WEGLARZ:</p> <p>22 Q. You never saw those marks before he was cuffed, agreed?</p> <p>23 A. I was not paying attention to his wrist and specific</p> <p>24 injuries.</p> <p>25 Q. So fair to say you don't recall ever seeing those marks</p>	<p>1 C E R T I F I C A T E</p> <p>2 STATE OF MICHIGAN )</p> <p>3 ) SS.</p> <p>4 COUNTY OF WAYNE )</p> <p>5 I certify that this transcript, consisting of</p> <p>6 pages, is a complete, true, and correct record of</p> <p>7 the testimony of OFFICER NICHOLAS BILL MITCHELL held in</p> <p>8 this case on Thursday, June 28, 2018.</p> <p>9 I also certify that prior to taking this</p> <p>10 deposition, OFFICER NICHOLAS BILL MITCHELL was duly</p> <p>11 sworn to tell the truth.</p> <p>12 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>13 on this 11th day of July, 2018.</p> <p>14 </p> <p>15 _____</p> <p>16 LEAH M. WITT, CSR-8825</p> <p>17 My Commission expires December 27, 2023</p> <p>18 Notary Public, County of Wayne</p> <p>19 State of Michigan</p> <p>20 U.S. Legal Support</p> <p>21 30800 Telegraph Road</p> <p>22 Bingham Farms, Michigan 48025</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 or injuries at any time before the cuffs were applied.</p> <p>2 A. Correct.</p> <p>3 MR. WEGLARZ: Okay. That's all I have.</p> <p>4 MS. McGIFFERT: I just have one question.</p> <p>5 RECROSS-EXAMINATION</p> <p>6 BY MS. McGIFFERT:</p> <p>7 Q. Officer Mitchell, based on your observations of</p> <p>8 Mr. Kapuscinski's behavior and his demeanor that day,</p> <p>9 do you believe it is likely that he would have complied</p> <p>10 if he was warned in advance that he was going to be</p> <p>11 tased?</p> <p>12 A. No.</p> <p>13 MS. McGIFFERT: I have nothing further.</p> <p>14 MS. FORBUSH: No questions.</p> <p>15 MR. WEGLARZ: Nothing.</p> <p>16 (At 1:36 p.m., proceedings concluded)</p> <p>17 - - -</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	





# **TASER® Handheld CEW Warnings, Instructions, and Information: Law Enforcement**



## **IMPORTANT SAFETY AND HEALTH INFORMATION**



This document presents important safety warnings, instructions, and information intended to minimize hazards associated with the use of TASER International, Inc. (TASER) Conducted Electrical Weapons (CEWs). These instructions and warnings are for your protection as well as the safety of others. Read the entire document before using a CEW.

When used as directed in probe-deployment mode, CEWs are designed to temporarily incapacitate a person from a safer distance than some other force options, while reducing the likelihood of death or serious injury. However, any use of force, including the use of a CEW, involves risks that a person may get hurt or die due to the effects of the CEW, physical incapacitation, physical exertion, unforeseen circumstances, or individual susceptibilities. Following the instructions and warnings in this document will reduce the likelihood that CEW use will cause death or serious injury.

These warnings and instructions are effective March 1, 2013, and supersede all prior revisions and relevant Training Bulletins. Immediately distribute this document to all TASER CEW users. The most current warnings are also available online at [www.TASER.com](http://www.TASER.com).

1. **Complete training first.** Significant differences exist between different TASER CEW models. Do not use or attempt to use any CEW model unless you have been trained by a Certified TASER Instructor on that particular model.<sup>1</sup>
2. **Read and obey.** Read, understand, and follow all current instructions, warnings, and relevant TASER training materials before using TASER CEWs. Failure to do so could increase the risk of death or serious injury to the user, force recipient, or others.
3. **Obey applicable laws, regulations, and agency Guidance.** Use of CEWs must be legally justified and comply with applicable federal, state, and local laws and regulations. The decision to use a CEW in a particular manner or circumstance must follow applicable law enforcement agency Guidance.<sup>2</sup>

Always follow all current instructions, warnings, and TASER training materials to minimize CEW risks.

This document uses a signal word panel to mark specific warnings:



This signal word panel indicates a potentially hazardous situation which if not avoided could result in death or serious injury.

Warnings may be followed by instructions and information to help avoid the hazard and improve CEW safety.

<sup>1</sup> A Certified TASER Instructor is not a TASER agent, but maintains a current TASER Instructor certification and complies with TASER's most current training requirements, materials and license agreement. Representations inconsistent with this document made by any Certified TASER Instructor are expressly disclaimed.

<sup>2</sup> Law enforcement agencies are force experts and are solely responsible for their own Guidance. "Guidance" includes policy, custom, procedure, rule, order, directive, training, continuum, and standard. TASER has no authority to mandate Guidance, set policy, require training, or establish standards of care or conduct.

March 1, 2013

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## **SAFETY INFORMATION: CEW RISKS AND RISK AVOIDANCE**



**Cumulative Effects.** CEW exposure causes certain effects, including physiologic and metabolic changes, stress, and pain. In some individuals, the risk of death or serious injury may increase with cumulative CEW exposure. Repeated, prolonged, or continuous CEW applications may contribute to cumulative exhaustion, stress, cardiac, physiologic, metabolic, respiratory, and associated medical risks which could increase the risk of death or serious injury. Minimize repeated, continuous, or simultaneous exposures.

**Physiologic and Metabolic Effects.** CEW use causes physiologic and/or metabolic effects that may increase the risk of death or serious injury. These effects include changes in blood chemistry, blood pressure, respiration, heart rate and rhythm, and adrenaline and stress hormones, among others. In human studies of electrical discharge from a single CEW of up to 15 seconds, the effects on acid-base balance, creatine kinase, electrolytes, stress hormones, and vital signs were comparable to or less than changes expected from physical exertion similar to struggling, resistance, fighting, fleeing, or from the application of some other force tools or techniques.

Some individuals may be particularly susceptible to the effects of CEW use. These susceptible individuals include the elderly, those with heart conditions, asthma or other pulmonary conditions, and people suffering from excited delirium, profound agitation, severe exhaustion, drug intoxication or chronic drug abuse, and/or over-exertion from physical struggle. In a physiologically or metabolically compromised person, any physiologic or metabolic change may cause or contribute to sudden death.

**Stress and Pain.** CEW use, anticipation of use, or response to use can cause startle, panic, fear, anger, rage, temporary discomfort, pain, or stress which may be injurious or fatal to some people.

To reduce the risk from CEW exposure:

1. **Minimize the number and duration of CEW exposures.** Most human CEW lab testing has not exceeded 15 seconds of CEW application, and none has exceeded 45 seconds. Use the shortest duration of CEW exposure objectively reasonable to accomplish lawful objectives, and reassess the subject's behavior, reaction, and resistance before initiating or continuing the exposure. If a CEW deployment is ineffective in incapacitating a subject or achieving compliance consider alternative control measures in conjunction with or separate from the CEW.
2. **Avoid simultaneous CEW exposures.** Do not use multiple CEWs or multiple completed circuits at the same time without justification. Multiple CEWs or multiple completed circuits at the same time could have cumulative effects and result in increased risks.
3. **Control and restrain immediately.** Begin control and restraint procedures, including during CEW exposure ("cutting under power"), as soon as reasonably safe and practical to minimize CEW cumulative effects and the total duration of exertion and stress experienced by the subject.
4. **Avoid touching probes/wires during CEW discharge.** Controlling and restraining a subject during CEW exposure may put the CEW user and those assisting at risk of accidental or unintended shock. Avoid touching the probes and wires and the areas between the probes during the electrical discharge.



**Cardiac Capture.** CEW exposure in the chest area near the heart has a low probability of inducing extra heart beats (cardiac capture). In rare circumstances, cardiac capture could lead to cardiac arrest. When possible, avoid targeting the frontal chest area near the heart to reduce the risk of potential serious injury or death.

Cardiac capture may be more likely in children and thin adults because the heart is usually closer to the CEW-delivered discharge (the dart-to-heart distance). Serious complications could also arise in those with impaired heart function or in those with an implanted cardiac pacemaker or defibrillator.



RW0001





# TASER® Handheld CEW Warnings, Instructions, and Information: Law Enforcement



To reduce the risk of injury:

1. Use preferred target areas. The preferred target areas (blue) are below the neck area for back shots and the lower center mass (below chest) for front shots. The preferred target areas increase dart-to-heart distance and reduce cardiac risks. Back shots are preferable to front shots when practicable.
2. Avoid sensitive areas. When practicable, avoid intentionally targeting the CEW on sensitive areas of the body such as the face, eyes, head, throat, chest area (area of the heart), breast, groin, genitals, or known pre-existing injury areas.



**Muscle Contraction or Strain-Related Injury.** CEWs in probe-deployment mode can cause muscle contractions that may result in injury, including bone fractures.



**Higher Risk Populations.** CEW use on a pregnant, infirm, elderly, or low body-mass index person or on a small child could increase the risk of death or serious injury. As with any force option, CEW use has not been scientifically tested on these populations. Use a CEW on such persons only if the situation justifies an increased risk.

CEWs in probe-deployment mode can cause muscle contractions resulting in injuries similar to those from physical exertion, athletics, or sports, including hernia rupture, dislocation, tear, or other injury to soft tissue, organ, muscle, tendon, ligament, cartilage, disc, nerve, bone, or joint; or injury or damage associated with or to orthopedic or other hardware. Fractures to bone, including compression fracture to vertebrae, may occur.

These injuries may be more serious and more likely to occur in people with pre-existing injuries, orthopedic hardware, conditions or special susceptibilities, including pregnancy; low bone density; spinal injury; or previous muscle, disc, ligament, joint, bone, or tendon damage or surgery. Such injuries may also occur in drive-stun applications or when a person reacts to the CEW deployment by making a rapid or unexpected movement.



**Secondary Injury.** The loss of control resulting from a CEW exposure may result in injuries due to a fall or other uncontrolled movement. When possible, avoid using a CEW when secondary injuries are likely.

Loss of control associated with CEW use can have several causes:

- Seizure. Repetitive stimuli (e.g., flashing light or electrical stimuli) can induce seizure in some people, which may result in death or serious injury. This risk may be increased in a person with epilepsy, a seizure history, or if electrical stimuli pass through the head. Emotional stress and physical exertion, both likely in incidents involving CEW and other uses of force, are reported as seizure-prone factors.
- Fainting. A person may experience an exaggerated response to a CEW exposure, or threatened exposure, which may result in fainting or falling.
- Muscle contraction, incapacitation, or startle response. CEW use may cause loss of control from muscle contraction, incapacitation, or startle response.

To reduce these risks, consider the person's location before using a CEW. When practicable, avoid using a CEW on a person in the following

circumstances unless the situation justifies a higher risk.

When practicable, avoid using a CEW on a person who:

- is on an elevated or unstable surface (e.g., tree, roof, ladder, ledge, balcony, porch, bridge, or stair);
- could fall and suffer impact injury to the head or other area;
- could fall on a sharp object or surface (e.g., holding a knife, falling on glass);
- is less able to catch or protect self in a fall (e.g., restrained, handcuffed, incapacitated, or immobilized);
- has impaired reflexes (e.g., from alcohol, drugs or certain medications);
- is running, in motion, or moving under momentum;
- is operating or riding any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, or train), conveyance (e.g., escalator, moving walkway, elevator, skateboard, rollerblades), or machinery; or
- is located in water, mud, or marsh environment if the ability to move is restricted.

## SAFETY INFORMATION: INJURY OR INFECTION

A CEW may cause injury as a result of the probe or electrical discharge. The nature and severity of these effects depends on numerous factors including the area of exposure, method of application, individual susceptibility, and other circumstances surrounding CEW use, exposure, and after care. Medical care may be required.



**Eye Injury Hazard.** A TASER probe, electrode, or electrical discharge that contacts or comes close to an eye can result in serious injury, including permanent vision loss. DO NOT intentionally aim a CEW, including the LASER, at the eye of a person or animal without justification.



**LASER Light Hazard.** CEWs use a LASER targeting aid. LASERS can cause serious eye injury, including permanent vision loss. NEVER aim a LASER at an aircraft or the operator of an aircraft or moving vehicle.



**Probe or Electrode Injury, Puncture, Scarring, or Infection Hazard.** CEW use may cause a permanent mark, burn, scar, puncture, or other skin or tissue damage. Infection could result in death or serious injury. Scarring risk may be increased when using a CEW in drive-stun mode. Increased skin irritation, abrasion, mark, burning, or scarring may occur with a CEW with multiple cartridge bays when used in drive-stun or three-point deployment modes.



**Penetration Injury.** The TASER probe has a small dart point which may cause a penetration injury to a blood vessel or internal organ, including lung, bone, or nerve. The probe or dart point (which may detach or break) can puncture or become embedded into a bone, organ, or tissue, which may require immediate medical care, surgical removal, or may result in scarring, infection, or other serious injury.

To reduce the risk of serious or permanent injury:

1. Provide medical care as needed. Injury due to penetration of a probe or dart point into a blood vessel, organ, nerve, or bone may require medical care. A probe, dart point, or barb embedded in a sensitive area such as the eye, genitals, breast, neck, throat, or vascular structure may cause serious injury and require medical care. CEW use may cause skin irritation, puncture wound, abrasion, mark, rash, burn, or other scar or infection, which may require medical care and may be permanent. As with any injury of this type, infection or tetanus and resulting complications may occur. In accordance with your agency's Guidance, ensure access to medical care if needed.

March 1, 2013

MP06014 Rev. Y  
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RW0002





# **TASER® Handheld CEW Warnings, Instructions, and Information: Law Enforcement**



2. Follow agency Guidance for removing probes. Probe removal may cause injury. Leaving a probe in the body may result in pain or injury. Follow your agency's Guidance and biohazard protocols for probe removal. In the case of embedment, organ or bone penetration, or probe, dart point, or barb detachment, immediate medical care and possible surgical removal may be required.
3. Follow biohazard protocols. Use appropriate biohazard protocols including isolation procedures and protective equipment (e.g., gloves, masks, and washing of hands and exposed areas as necessary). Follow your agency's Guidance and appropriate biohazard, waste, and evidence protocols when dealing with biohazards.

## **SAFETY INFORMATION: CEW DEPLOYMENT AND USE**

**WARNING** CEWs and cartridges are weapons and as with any weapon follow safe weapon-handling practices and store your CEW securely. Follow practices herein and additional requirements in your agency's Guidance. Failure to follow these warnings may result in death or serious injury to the user or others.

**WARNING** Confusing Handgun with CEW. Confusing a handgun with a CEW could result in death or serious injury. Learn the differences in the physical feel and holstering characteristics between your CEW and your handgun to help avoid confusion. Always follow your agency's Guidance and training.

**WARNING** Trigger Hold-Back Model Differences. If the trigger is held back, most CEWs will continue to discharge until the trigger is released or the power source is expended. With an APFM installed, the X2 and X26P can be programmed to stop a CEW discharge at 5 seconds even if the user continues to hold back the trigger, requiring a deliberate action to re-energize the deployed cartridge. Know your model and how it works. Avoid repeated, prolonged, or continuous CEW applications when practicable.

**WARNING** In stressful or noisy circumstances, the APFM's audible warning may not be heard.

1. Use properly. Use a CEW only for its intended purpose, in legally justifiable situations, and in accordance with your agency's Guidance. Do not use for torture.
2. Store in a secure location. Store CEWs, cartridges, and accessories in secure locations inaccessible to children and other unauthorized persons to prevent inappropriate access or use.
3. Use the safety switch. Place the CEW safety switch in the down (SAFE) position when the CEW is not in use. Remember to place the CEW safety switch in the up (ARMED) position when you intend to use the CEW.
4. Assume CEW is loaded. Always assume that a CEW is loaded and capable of discharging. To help avoid unexpected discharge, ensure that no live cartridge is in the CEW when inserting a battery pack; TASER CAM™ or TASER CAM HD recorder; or while performing spark tests (except when function testing the X2 or X3), maintenance, data downloading, or battery charging.
5. Be aware of CEW trigger. Keep your finger off the trigger until it is legally justifiable to use the CEW and you are ready to deploy.
6. Know how the CEW works. Significant differences exist between different TASER CEW models. Before using any CEW, including a multi-shot CEW, ensure you understand the functioning and effects of that model.
7. Be aware of X2 and X3 deployment mode. Be aware of which deployment mode (manual or semi-automatic) is set on the X2 and X3 before use.

8. Be aware of X2 Static (Fixed) LASER Sight Mode. The X2 has static dual LASERs. One LASER is intended to approximately align with the top dart and the other with the bottom dart, both of which are set-up for 15' (4.6 meters (m)) and 25' (7.62 m) cartridges at a 15' distance from the target. The trajectory of the 35' (10.7 m) long range cartridge will not line up with the bottom LASER when placed in the X2.
9. Use simulation (training) cartridges ONLY for training or practice. DO NOT use a CEW loaded with a simulation training cartridge for field use or self-defense. Simulation cartridges are intended for practice only and will have no incapacitating effect on a subject. Simulation cartridges use non-conductive wires and will not transmit electrical pulses to the probes.

## **SAFETY INFORMATION: CEW EFFECTIVENESS**

A CEW, like any weapon or force option, does not always function as intended and is not effective on every subject. As with any use of force, if a particular option is not effective, consider using other force options, disengaging, or using other alternatives per agency Guidance. Always have a back-up plan.

**WARNING** Subject Not Incapacitated. An ineffective CEW application could increase the risk of death or serious injury to the user, the subject, or others. If a CEW does not operate as intended or if subject is not incapacitated, disengage, redeploy the CEW, or use other force options in accordance with agency Guidance.

A CEW's effects may be limited by many factors, including absence of delivered electrical charge due to misses, clothing disconnect, intermittent connection, or wire breakage; probe locations or spread; subject's muscle mass; or movement. Some of the factors that may influence the effectiveness of CEW use in effecting or achieving control of a subject include:

- Subject may not be fully incapacitated. Even though a subject may be affected by a CEW in one part of his body, the subject may maintain full muscle control of other portions of his body. Control and restrain a subject as soon as possible, and be prepared in case the subject is not fully incapacitated.
- Subject may recover immediately. A subject receiving a CEW discharge may immediately regain physical or cognitive abilities upon cessation of the delivered CEW discharge. Control and restrain a subject as soon as possible, and be prepared in case the subject immediately recovers.
- Drive-stun mode is for pain compliance only. The use of a handheld CEW in drive-stun mode is painful, but generally does not cause incapacitation. Drive-stun use may not be effective on emotionally disturbed persons or others who may not respond to pain due to a mind-body disconnect. Avoid using repeated drive-stuns on such individuals if compliance is not achieved.
- Probes may deviate. CEWs are not precision-aimed weapons. Probe discharge, flight trajectory, and impact location can be affected by numerous factors, including cartridge or probe accuracy; failure of cartridge to properly deploy; strong air movements; user and subject movements; or probe striking subject, clothing, or object with insufficient force or trajectory to penetrate or adhere to subject. Deviations can result in limited or lack of effectiveness due to misses, failure to complete or maintain the electrical circuit, a small probe spread, or failure to deliver a sufficient charge to the subject.
- CEW or cartridge may fail to fire or operate. No weapon system, force option, or CEW is always operational or effective. If a CEW, cartridge, or accessory is inoperable or fails to function, consider reloading and redeploying, using other force options, disengaging, or using other alternatives per agency Guidance.

## **SAFETY INFORMATION: OTHER HAZARDS**

**WARNING** Probe Recoil or Ricochet. If your target is farther away than the length of the probe wire, or if one or more probes miss the target, the probe can recoil and bounce back to strike the user or a

March 1, 2013

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MPC0014 Rev. Y

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RW0003





# TASER® Handheld CEW Warnings, Instructions, and Information: Law Enforcement



bystander, causing injury. Probe recoil is more likely with simulation cartridges because of the nylon probe wire used.

Always be sure your target is within range. Wear protective eyewear when deploying any CEW in training or for practice. Be sure practice targets have a firm backing that will allow the probes to stick and not bounce off and strike an unintended person, animal, or object, or continue through the backing and strike objects behind the target.



**Unintentional Discharged Probe.** A discharged probe that does not impact a subject or target may become unattached from the wire and travel a significant distance causing serious injury. Always be sure your target is within range.



**Fire and Explosion Hazard.** CEW use can result in a fire or explosion when flammable gases, fumes, vapors, liquids, or materials are present. Use of a CEW in presence of fire or explosion hazard could result in death or serious injury. When possible, avoid using a CEW in known flammable hazard conditions.

A CEW can ignite explosive or flammable clothing or materials, liquids, fumes, gases, or vapors (e.g., gasoline, vapor or gas found in sewer lines or methamphetamine labs, butane-type lighters, flammable hair gels or some self-defense sprays). Do not knowingly use a CEW in the presence of any explosive or flammable substance unless the situation justifies the increased risk.

## SAFETY INFORMATION: GENERAL PRECAUTIONS



**Unintentional CEW Deployment or Discharge Hazard.** Unintentional CEW activation or unexpected cartridge discharge could result in death or serious injury to the user, subject, or others.

To reduce the risk of unintentional deployment or discharge:

1. Avoid static electricity. Keep cartridge away from sources of static electricity. Static electricity can cause a CEW or X26, X26P, or M26 cartridge to discharge unexpectedly, possibly resulting in serious injury.
2. Keep body parts away from front of CEW or cartridge. Always keep your hands and body parts away from the front of the CEW and cartridge. If the CEW discharges unexpectedly you could be injured.
3. Avoid electronic equipment interference. Electronic transmission equipment close to a CEW could interfere with the proper CEW operation and cause the CEW to deploy or discharge. Keep the CEW at least several inches away from other electronic equipment. Place the CEW safety switch in the down (SAFE) position whenever it is near electronic equipment, including transmitting radios and cell phones. Remember to place the CEW safety switch in the up (ARMED) position before use.
4. Avoid dropping CEW or cartridge. If a CEW or cartridge is dropped or damaged it may unintentionally deploy or discharge, become inoperable, or fail to function, making it unsafe for continued use. If a CEW or cartridge has been dropped or damaged refer to the procedure recommended in the current version of the TASER Training materials.

## SAFETY INFORMATION: MAINTENANCE



**Failure to maintain a CEW as instructed may cause the CEW to malfunction or fail to function optimally, increasing the risk of death or serious injury. Follow recommended maintenance procedures.**

To reduce these risks:

1. Safely perform spark (function) test before each shift. Testing helps verify that the CEW is functioning properly. See the current version of the TASER Training materials for further information on testing.

2. Avoid using a damaged CEW or cartridge. Do not use a cartridge with a missing blast door unless facing an immediate threat. CEW repair or modification by an unauthorized person may cause the CEW to fire or malfunction, will void the warranty, and may put the user or other person at risk of death or serious injury. Cartridges with blast doors that have been repaired should only be used for training and not for field use.

3. Update CEW software. Some CEWs have updateable software. Current CEW software may be obtained by contacting TASER's Customer Service Department or following instructions at [www.evidence.com](http://www.evidence.com) or [www.TASER.com](http://www.TASER.com).

4. Use only TASER-approved components, batteries, accessories, and cartridges. The CEW is a sophisticated electronic system. For proper function, use only TASER-approved components, batteries, accessories, and cartridges with your CEW. Use of anything other than TASER-approved components, batteries, accessories, and cartridges will void the warranty, may cause malfunction, and may put the user or other person at risk of death or serious injury.

5. Avoid exposure to wet conditions. If the CEW is drenched or immersed in water or other liquid, DO NOT use or attempt to use the CEW until completing the procedure recommended by the manufacturer.

6. Keep Smart™ cartridge contacts clean. If the contacts on the Smart cartridge or inside the Smart cartridge bay of the X2 or X3 are not kept clean the CEW may fail to deploy the Smart cartridge.

7. Know CEW and cartridge expected useful life. Under normal storage, handling, and operating conditions, a CEW and cartridges have a 5-year expected useful life. Use or attempted use of a CEW or cartridge after its expected useful life may result in malfunctions and lack of effectiveness. Failure to properly care for and maintain a CEW or cartridge may substantially reduce or eliminate the expected useful life of the product.

## SAFETY INFORMATION: HAZARDOUS SUBSTANCES



**Hazardous Substances.** The CEW (including the cartridge) has components that contain chemicals known to the State of California and others to cause cancer and birth defects or other reproductive harm. Do not disassemble. Refer to your agency's Guidance for proper handling and disposal.

March 1, 2013

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MP00014 Rev: Y

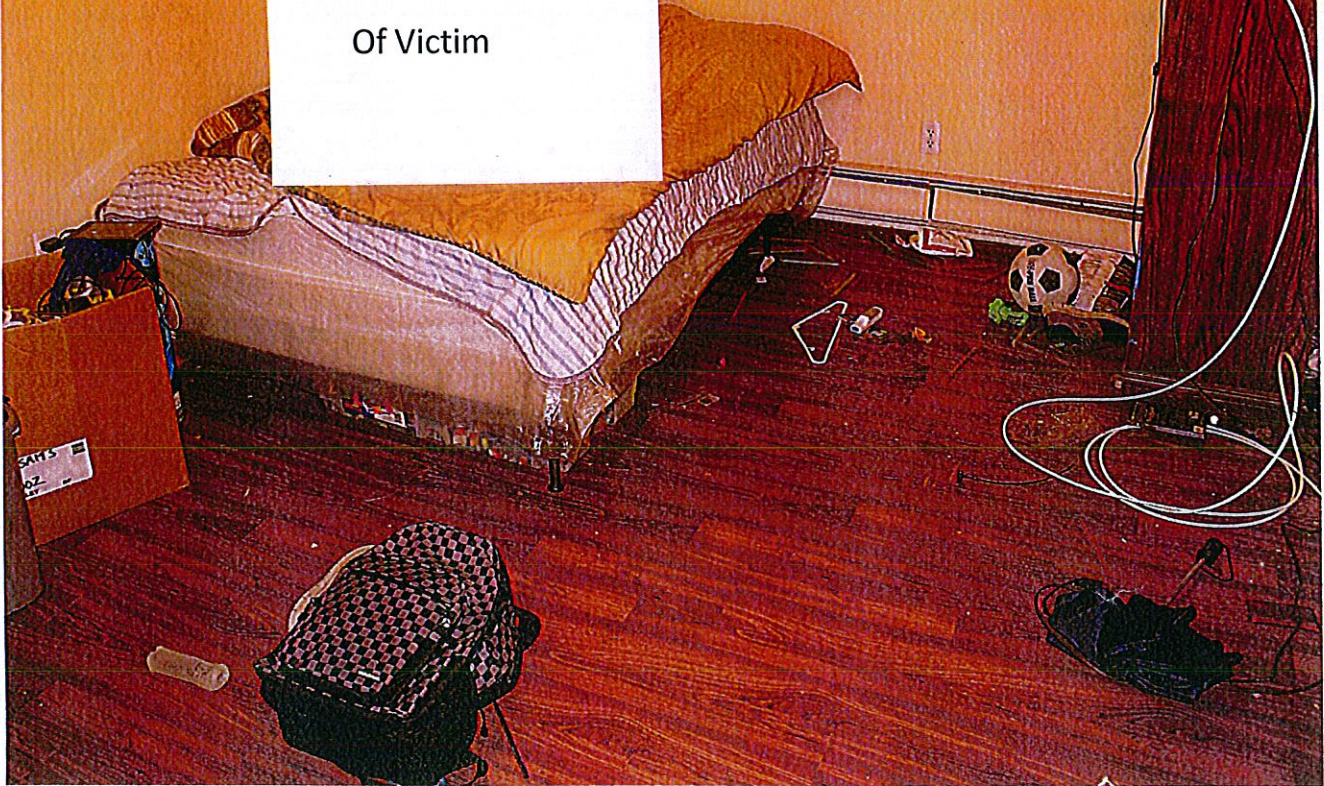
Page: 4 of 4

RW0004



Redacted Image

Of Victim







**ROCKWOOD POLICE DEPARTMENT  
ORIGINAL COMPLAINT**



Complaint #	15-1378	Officer	N. Mitchell	Date/Time	04/16/15@0328
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**Information:**

On 04/16/15 at approximately 0328 hours, Officer Gary Robinson of the Gibraltar Police Department and I were talking in the parking lot of Carlson High School when he was dispatched to 14680 Middle Gibraltar Road in regards to a domestic violence in progress. Officer Robinson asked me if I would assist him and I agreed to. This is standard practice of both departments. Gibraltar's Dispatcher requested the Trenton Police Department to assist as well and Officer Robinson told her over the radio that I was going to the scene to assist.

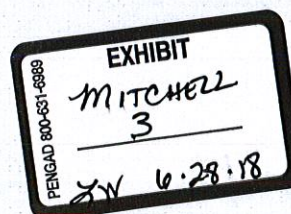
**Investigation:**

Upon arrival, we met with a juvenile male who was holding the door open to the apartment building. The juvenile appeared highly upset and was crying. He led us to the apartment upstairs and then went back downstairs and said he would wait down there because he was scared.

Officer Robinson knocked on the door to the apartment, and a juvenile female answered the door. Officer Robinson asked her where the fight was occurring. The juvenile female also appeared highly upset and was crying.

Officer Robinson and I entered the apartment, which was in disarray. There were clothes thrown all over apartment and various objects thrown on to the floor. After entering the apartment, we could hear what sounded like someone gasping for air. We then heard a male voice telling someone that he was going to kill them. The voice stated this multiple times. I am unsure if he stated "I am going to kill her" or "I will kill you", it was a variation of that.

The voice was coming from the back bed room. Officer Robinson and I entered the back bedroom of the apartment. We observed a fully nude male and a female nude from the waist down on the bed. The male had the female's neck between his legs and was squeezing her neck choking the female. At this point, I feared that if the male continued this action, the female would lose her life. Through my training and experience, it appeared to me that the male was under the influence of an unknown substance. The male was highly aggressive and had a look on his face that I can only describe as complete rage and aggression.



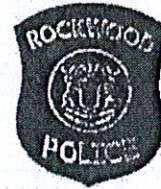
RW0017

Signature \_\_\_\_\_ Reviewed by \_\_\_\_\_





*ROCKWOOD POLICE DEPARTMENT  
ORIGINAL COMPLAINT*



Officer Robinson gave the male several verbal commands to get off of the female. The male ignored all verbal commands. At this point, Officer Robinson deployed his TASER. Officer Robinson struck the male with one probe from his TASER and the second probe missed. This was enough to get the male and the female to separate, however the male was not under any power from the TASER. The female was able to break loose and fled the room. The male was then on the floor and kicking and being aggressive towards us. The verbal commands from Officer Robinson to put his hands behind his back were not followed. The male attempted to get up. Fearing further physical confrontation I deployed my TASER. I was able to hit the male with my TASER successfully. One probe went into the male's chest and the other went into his lower abdomen. During the course of this incident, I applied only one-five second cycle from my TASER.

At this point, Officer Robinson was able to handcuff the male, while I immediately advised Gibraltar's Dispatch to send an ambulance per Department procedure. At this point, the male was still moving and breathing.

**After TASER actions:**

After deploying the TASER, Officer Robinson and I monitored the male while waiting for rescue. The male was turned onto his right side in the recovery position. While in this position, the male was still breathing and Officer Robinson found a pulse on him, but he was not responding to us.

Officer Robinson asked his Dispatcher to request the Fire Department to move a little bit quicker and then requested Brownstown Township Fire to respond with a paramedic unit.

Shortly after, we observed that the male had stopped breathing, but still had a pulse. Officer Robinson stated that he needed a CPR mask to start rescue breaths. I told him that I would go to my car and get one. At this time, one Trenton Police Officer arrived on scene. As I was walking back in to the building, a second Trenton Police Officer arrived on scene.

I went to my car and got a CPR mask and went back into the apartment. Upon arrival back at the apartment, I observed Officer Robinson performing CPR chest compressions on the male. Officer Robinson continued to do chest compressions while I readied the CPR mask. I performed rescue breaths on the male while Officer Robinson performed the chest compressions. While kneeling next the male, I observed that I had knelt down in fecal matter and that there was fecal matter in various parts of the apartment.

RW0018

Signature \_\_\_\_\_ Reviewed by \_\_\_\_\_





*ROCKWOOD POLICE DEPARTMENT  
ORIGINAL COMPLAINT*



Officer Robinson performed chest compressions for several cycles until getting tired. At this point, Officer Robinson requested that I take over the chest compressions. I performed chest compressions for a few minutes until the Gibraltar Fire Department arrived on scene and continued to perform chest compressions while they readied their AED. Once their AED was ready, I stopped performing chest compressions and turned the male over to the Fire Department. I observed as the Fire Department placed the AED pads on the male and provided him with a shock.

I collected both my TASER wire and probes and Officer Robinson's TASER wire. I secured them into evidence bags. I turned Officer Robinson's TASER wire over to him and I later turned my TASER wire and probes over to Det/Sgt. Mercure who then turned it over to the Michigan State Police.

The male was then taken outside and placed in Brownstown's ambulance. He was transported to Oakwood South Shore Hospital.

**Interviews:**

Officer Robinson spoke with the female and the two young children about this incident.

**Notification of Supervisors:**

Officer Robinson requested that I stay and secure the scene while he notified his supervisor. While Officer Robinson was outside speaking with his supervisor, I heard the female tell the juvenile male to go to bed and she cleaned all the paramedic's stuff out of his room.

After returning to the apartment, I went to my patrol car and called Lt. Krause and also Det/Sgt. Mercure.

**Written Statements/ Further Interviews:**

Officer Robinson attempted to get a written statement from the female and juvenile male. Both written statements were approximately one sentence each. Officer Robinson requested that both parties provide a little more detail. The female seemed very uncooperative and at one pointed told us that she did not want the male to get in trouble.

Officer Robinson talked with the female who then told him that the male had assaulted the juvenile male and held him (juvenile) down with his (adult male) foot on the juvenile's neck.

RW0019

Signature \_\_\_\_\_ Reviewed by \_\_\_\_\_





*ROCKWOOD POLICE DEPARTMENT  
ORIGINAL COMPLAINT*



The female also stated that the male was attempting to force her into performing oral sex on him. At this time, the female stated he did not attempt any penetration.

We noticed that there were several pill bottles and multiple different loose pills all over the apartment. The female told us that the male takes Seroquel for Bi-polar disorder.

**Interview with Neighbor:**

I spoke with the neighbor in apartment 12, Patricia Dawn Hust. Hust told me that she had heard fighting going on in the apartment upstairs. Hust told me that she could hear "bodies being thrown around" and a lot of yelling, but could not make out any of the words. Hust stated that this had been going on for approximately the last hour.

**Change of Clothes:**

Due to kneeling in fecal matter while perming CPR, I requested permission from Lt. Krause to go home and get a change of clothes. I went to the Rockwood Police Department, where I took off my full uniform and immediately turned everything over to Det/Sgt. Mercure. Det/Sgt. Mercure provided me coveralls to wear to go home and get a change of clothes.

At the time Det/Sgt. Mercure provided me with a change of clothes, he requested that I take a Preliminary Breath Test just as a precaution. I advised him that I had not consumed any alcohol and would submit to the test. Det/Sgt. Mercure obtained a PBT reading of .000% from me. This was done in front of the camera in the Police Department garage.

**Disposition:**

This report is written for informational purposes. For further information on this case, see Gibraltar Police Department case number 15-1378. The scene and case were turned over to the Gibraltar Police Department.

**Status:**

Closed.

RW0020

Signature \_\_\_\_\_ Reviewed by \_\_\_\_\_



**TASER® USE REPORT**

Rockwood Police Department

Date: 4/16/18 Time: 0328 Case Number: 15-1378TASER Officer's Name: Mitchell Officer(s) Involved: Mitchell, Robinson

Dept Address: 32409 Fort Street Rockwood, MI. 48173 Phone: 734-379-5323

On Scene Supervisor: RobinsonDepartment TASER Number #1 \_\_\_\_\_ #2 ☒ #3 \_\_\_\_\_ #4 \_\_\_\_\_ (check one)

Air Cartridge Serial Number(s): \_\_\_\_\_

Air Cartridge Type(s): \_\_\_\_\_ 15-ft \_\_\_\_\_ 21-ft \_\_\_\_\_ 21-ft XP ☒ 25-ft XP(Green)TASER Serial #: X2900/012 Medical Facility: Southshore Doctor: \_\_\_\_\_Nature of the Call or Incident: Domestic Charges: N/A Booked: Y ☒ NType of Subject: ☒ Human \_\_\_\_\_ Animal \_\_\_\_\_ Accidental Firing (no injury or damage)Location of Incident: ☒ Indoor ( ) Outdoor ( ) Jail ( ) Hospital ( ) VehicleType of Force Used (Check all that apply): ( ) Physical ☒ Less-lethal ( ) Firearm ( ) ChemicalNature of the Injuries and Medical Treatment Required: Became unresponsiveAdmitted to Hospital for Injuries: ☒ Y ☒ NAdmitted to Hospital for Psychiatric: Y ☒ NMedical Exam: ☒ Y ☒ N Suspect Under the influence: Alcohol / Drugs (specify): unknownWas an Officer, Police Employee, Volunteer or Citizen Injured other than by TASER? Y ☒ N

Incident Type (circle appropriate response(s) below):

Civil Disturbance Suicidal Suicide by Cop Violent Suspect Barricaded Warrant OtherAge: 39 Sex: Male Height: 509 Race: White Weight: 155TASER use (circle one): Success / FailureSuspect wearing heavy clothes: Y ☒ NNumber of Air Cartridges fired: 1 Number of cycles applied: 1Usage (check one): ( ) Arc Display Only ( ) Laser Display Only ☒ TASER ApplicationTASER: Is this a dart probe contact: ☒ Y ☒ NIs this a drive stun contact: Y ☒ NApproximate target distance at the time of the dart launch: 4 feetDistance between the two probes: 15 inches Need for an additional shot? Y ☒ NDid dart contacts penetrate the subject's skin? ☒ Y ☒ N Probes removed on scene: ☒ Y ☒ NDid TASER application cause injury: ☒ Y ☒ N If yes, was the subject treated for the injury: ☒ Y ☒ N

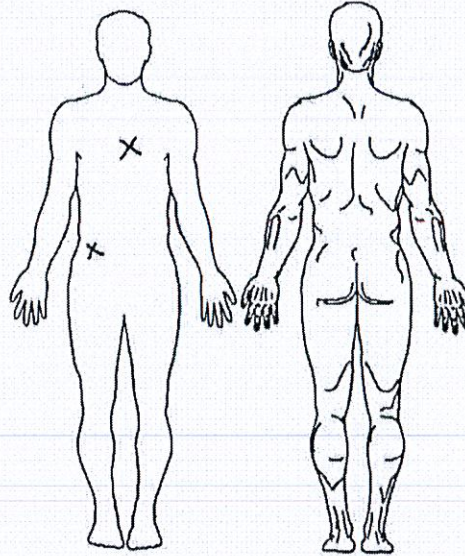
DESCRIPTION OF INJURY:

Became unresponsive and later pronounced deceased**TASER® USE REPORT**

RW0023



**APPLICATION AREAS**  
(Place "X's" where probes hit suspect AND "O's" where stunned)



**SYNOPSIS:**

Subject was violently assaulting female. Gibraltar officer  
Robinson attempted TASER and missed with one probe. Subject  
came towards us and I used my TASER.

Need for additional applications? Y ☒ N Did the device respond satisfactorily? ☒ Y / N

If the TASER firing was unsuccessful was a DRIVE STUN follow-up used? Y / ☒ N

Describe the subject's demeanor after the device was used or displayed?

Become unresponsive, But when checked - had a pulse and was breathing

Chemical Spray: Y ☒ N

Baton or Blunt Instrument: Y ☒ N

Authorized control holds: Y ☒ N

If yes, what types: \_\_\_\_\_

Describe other means attempted to control the subject: \_\_\_\_\_

Photographs Taken: Y ☒ N

Report Completed by: Nicholas Mitchell

**ADDITIONAL INFORMATION**

Report Reviewed by: [Signature]

Date: 04/18/15





EXHIBIT  
MITCHELL  
5  
XW 6.28.18  
PENGAD 800-831-6989